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Avoiding the Worst-Case Scenario

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Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



Avoiding the Worst Case Scenario Whether Indigenous Peoples and Local Communities in Asia and Africa are Vulnerable to Expropriation Without Fair Compensation

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Abstract

This paper examines whether national expropriation and land laws in 30 countries across Asia and Africa put Indigenous Peoples and local communities at risk of expropriation without compensation. In particular, this paper examines whether national laws ensure that communities are eligible for compensation, and whether eligibility requirements effectively close the door on communities seeking compensation. The analysis is based on an assessment of national-level expropriation and compensation procedures, and also draws on research findings from the legal indicator data available on LandMark, a global platform of indigenous and community lands. The analysis measures national expropriation and land laws against a set of "compensation security" indicators. The indicators ask questions about whether laws impose restrictions on the rights of communities to receive compensation upon expropriation. The indicators were developed based on the principles established in the Voluntary Guidelines on the Responsible Governance of Tenure (2012) (VGGTs). By measuring national laws against international standards, and examining whether these 30 countries' national laws provide potential loopholes through which governments may expropriate community land without compensating affected communities, this paper highlights legal gaps that must be filled in order for the VGGTs to be adopted in these 30 countries.

Key Words: expropriation, compensation, Indigenous Peoples, customary tenure, collective tenure

I. Introduction

For centuries, Indigenous Peoples and local communities (hereinafter “IPLCs” or “communities”)¹ have held, used and depended on land for food, shelter, income, traditional practices, and other basic needs. Historically, community land was commonly governed under customary tenure systems, which have long standing origins in the norms and practices rooted in the community and often go back centuries. Meanwhile, governments often considered community land areas as vacant, idle, or state-owned property. While communities are estimated to hold as much 65 percent of the world’s land, research shows that national governments only formally recognize² a fraction of this land as owned or controlled by communities.³ The gap between formally recognized and customarily-held land continues to be a significant source of underdevelopment, conflict, and environmental degradation.⁴

Without secure tenure rights,⁵ meaning rights that are enforceable and recognized by the government and others, IPLCs are not only at risk of poverty, poor health, and human rights abuse, they are also vulnerable to expropriation without payment of compensation.⁶ Best

¹ Adopting *LandMark*’s definition of “communities”, this paper defines “communities” (or “IPLCs”) as “groupings of individuals and families that share interests in a definable local land area within which they normally reside...(1)[communities usually] have strong connections to particular areas or territories and consider these domains to be customarily under their ownership and/or control. (2)They themselves determine and apply the rules and mechanisms through which rights to land are distributed and governed...(3) Collective tenure and decision-making characterize the system. Usually, all or part of the community land is owned in common by members of the community and to which rights are distributed”. “Community Lands” are all lands that fall under the customary governance of the community whether or not this is recognized in national law. Community land is variously described as the community domain, community land area, community territory, or other terms (*e.g.*, Tanzania refers to village lands, Ghana to customary lands, China to collectives, Cambodia refers to indigenous lands, etc.). L. Aden Wily, P. Veit, R. Smith, F. Dubertret, K. Reyter, and N. Tagliarino. “Guidelines for Researching, Scoring and Documenting Findings on ‘What National Laws Say About Indigenous & Community Land Rights’.” Methodology document from *LandMark: The Global Platform of Indigenous and Community Lands*. Available at: www.landmarkmap.org, 2016(a).

² “Formally recognized” in this paper refers to land rights that are recognized by national-level statutory and regulatory frameworks. As discussed in detail below, achieving formal recognition often entails fulfilling land registration or certification requirements; however, in some countries, recognition is granted automatically to communities based on customary occupation and use of the land.

³ Alden Wily, L. “The tragedy of public lands: The fate of the commons under global commercial pressure.” *International Land Coalition*, 2011; Rights and Resources Initiative (RRI). “Who Owns the World’s Land? A Global Baseline of Formally Recognized Indigenous and Community Land Rights.” Washington, D.C.: RRI, 2015.

⁴ *Ibid.*; Oxfam, International Land Coalition, and Rights and Resources Initiative. *Common Ground: Securing land rights and safeguarding the earth*. Oxford: Oxfam, 2016. Available at: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-common-ground-land-rights-020316-en_o.pdf

⁵ “Tenure” refers to an institution with rules that define how property rights to land are to be allocated within a community or society. “Tenure rights” are the rights of individuals or groups, including Indigenous Peoples and communities, over land and resources. Tenure rights include, but are not limited to, possession rights, use rights, and rental, freehold, customary, and collective tenure arrangements. The bundle of tenure rights can include the rights of access, withdrawal, management, exclusion, and alienation.

⁶ “Expropriation” is the power of governments to acquire privately held tenure rights, without the willing consent of the tenure rights holder, for a public purpose of benefit. In this paper, “expropriation” refers to eminent domain,

practice dictates that governments avoid expropriating ancestral lands held by indigenous and local communities, and respect the right to free prior and informed (FPIC) consent.⁷ When governments decide to compulsorily acquire land to serve public needs, it is important that laws establish additional safeguards that respect and protect the tenure rights and livelihoods of affected populations.

In many countries, once the decision to expropriate land is made, compensation procedures may only grant compensation to private property owners and others with statutorily recognized tenure rights. Under such legal regimes, communities who hold land under customary tenure without statutorily recognized rights may be effectively precluded from submitting claims for compensation. If expropriation and compensation procedures only apply when registered tenure rights are acquired, and thus unregistered communities become evicted without compensation, they may subsequently fall into extreme poverty, suffer health problems, and endure other consequences such as landlessness and cultural extinction. Legal barriers to obtaining compensation are potentially very problematic given that, globally, up to 2.5 billion people hold land under customary tenure.⁸ In Africa, it is estimated that 625 million people are customary tenure holders, and that 90% of rural Africa is undocumented and informally administered.⁹ Some scholars argue that compensation can hardly put communities in the same position they would have been in had the property not been taken, since the “loss of property damages the community in and of itself”. As Stern, Cernea, and others argue, the expropriation of community land may, in certain circumstances, necessitate additional compensation for the loss of communality.¹⁰

takings, compulsory purchase, compulsory acquisition and other names given to this government power around the world.

⁷ Sections 9.5 and 9.9 of the UN Voluntary Guidelines on the Responsible Governance of Tenure (2012) provides “Indigenous peoples and other communities with customary tenure systems should not be forcibly evicted from such ancestral lands...[development] projects should be based on an effective and meaningful consultation with indigenous peoples, through their own representative institutions in order to obtain their free, prior and informed consent under the United Nations Declaration of Rights of Indigenous Peoples and with due regard for particular positions and understandings of individual States” A discussion of expropriation decision-making processes and FPIC will be included in future research papers for this author’s dissertation at the University of Groningen. The scope of this paper, however, is on compensation eligibility requirements. United Nations. 2012. “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security”, Sec. 9.5. Rome, Italy: FAO. Available at: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

⁸ Oxfam International et al. 2016.

⁹ L. Alden Wily. “Compulsory Acquisition as a Constitutional Matter: The Case in Africa.” Forthcoming, p. 1; F. Byamugisha, 2013. “Securing Africa’s Land for Shared Prosperity.” Washington, D.C.: World Bank, 2013; RRI, 2015.

¹⁰ Stern, S. 2015. “Expropriation Effects on Residential Communities” in *Rethinking Expropriation Law II: Context, Criteria, and Consequences of Expropriation* edited by B. Hoops, E. J. Marais, H. Mostert, J.A.M.A. Sluysman, and L.C.A. Verstappen. Den Haag, The Netherlands: Eleven International Publishing, 359-391; Cernea, M. “Compensation and benefit sharing: Why resettlement policies and practices must be reformed.” *Water Science and Engineering*, Vol. 1, No. 1, 89-120, 2008.

IPLCs may be vulnerable to expropriation without compensation if governments only consider IPLCs as permissive occupiers of state-owned land. In many developing countries, there may be a broad range of possession, use, and other tenure rights on land classified by law as “public property,” which are either unrecognized or inadequately protected by law. According to Lindsay et al. (2016), in such areas, “many [land] interests considered valuable in a particular social context may not be considered legitimate objects of compensation.”¹¹ According to Terminiski:

“An observed practice in countries of the global south is the lack of or very slight compensation received by people who have no legal right to the land they live on (such as tribals, adivasi people and several categories of illegal settlers)...[and] the lack of formalized rights to the land not only leads to lack of profit for local communities from its exploitation, but just as often makes it impossible to obtain compensation for loss of property.”¹²

Banerjee and Van Eerd conducted an empirical study on expropriation, eviction, and resettlement practices and found that compensation was not provided to many affected communities in Nigeria, Indonesia, Cambodia, China, and Sri Lanka because governments refused to recognize their tenure rights.¹³ As a consequence of expropriation without compensation, many of these communities became homeless, experienced income loss, and suffered other negative impacts. In Tanzania, the government evicted several thousand Maasai from the Mkomazi Game Reserve without compensation.¹⁴ In Nigeria, the Lagos state government refused to grant compensation to affected communities because it considered the communities as “illegal occupiers” of the expropriated land.¹⁵ The government stated in its project plan that it was “mindful of setting a precedent or communicating a policy whereby illegal occupiers of land without development permits have to be paid full compensation upon eviction.” Empirical research in Afghanistan also found that community lands are often not sufficiently protected by law. According the World Bank’s LGAF Assessment of Afghanistan,

“[a] major problem in the recognition of rural tenure rights in Afghanistan is that Afghan land laws do not protect collective ownership, very commonly used in Afghanistan... Particularly in the rural context, where due to the historical, tribal and ethnical linkages most of the lands are held collectively without any or only a customary documentation, according to the World Bank assessment [of relevant laws], there were “weak or no real provisions” to protect collectively owned lands.”¹⁶

¹¹ J. Lindsay et al. “Compulsory Land Acquisition in Developing Countries: Shifting Paradigm or Entrenched Legacy” in H. Lee, I. Kim, I. Somin (eds) Cambridge University Press, forthcoming.

¹² Terminiski, B. “Development-Induced Displacement and Resettlement: Theoretical Frameworks and Current Challenges.” Geneva, University of Geneva Research Paper-9/2013, 2013.

¹³ M. Van Eerd. and B. Banerjee. “Working Paper I: Evictions, Acquisition, Expropriation and Compensation: Practices and selected case studies.” Nairobi: United Nations Human Settlements Programme, 2013.

¹⁴ P. Veit et al. Protected Areas and Property Rights: Democratizing Eminent Domain in East Africa. Washington, D.C.: World Resources Institute, 2008.

¹⁵ Amnesty International. “At the Mercy of the Government: Violation of the Right to an Effective Remedy in Badia East, Lagos State, Nigeria.” *Amnesty International*, 2014, p. 15 Available at: <https://www.amnesty.org/en/documents/AFR44/017/2014/en/>

¹⁶ World Bank. Land Governance Assessment Framework Synthesis Report (Afghanistan). Washington, D.C: World Bank Group, 2016.

Across the globe, the treatment of people who live on or use land without legal ownership has been found to be a principal difference between domestic legal systems and the World Bank's and the Asian Development Bank's resettlement policies.¹⁷ In Botswana, for example, a report published by the World Bank found that:

“While the government has tended to pay handsomely for freehold land acquired by the state, the compensation offered by land boards for repossessed tribal land has been inadequate...Land boards have argued that, since tribal land is ‘free’, it is impossible to quantify, in monetary terms, loss of rights to use a particular piece of land beyond the unexhausted improvements on it (e.g. standing crops, boreholes, fences, buildings, ploughing). Thus, to land boards, compensation does not need to reflect the development value of land, even in peri-urban areas.”¹⁸

To assess whether national laws put communities at risk of this “worst-case scenario” (i.e. expropriation without compensation), this paper analyzes the legal rights of IPLCs in 30 countries across Asia and Africa as of 2016 to determine whether communities are legally eligible for compensation, and whether eligibility requirements effectively close the door on communities seeking compensation. Based on the findings from the analysis, this paper presents a set of recommendations for protecting community rights to compensation as established in Section 16 of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security* (hereinafter “the VGGTs”).¹⁹

This paper is divided into six sections. Section II discusses the right to compensation as established by the VGGTs and other international instruments. Section III discusses the paper's background and methodology. Section IV discusses the usefulness of this paper. Section V presents the research findings and analysis. Section VI draws conclusions and recommends legal reforms for ensuring that IPLCs are entitled to compensation when their land is expropriated.

II. The Right to Compensation as established by the VGGTs and other international instruments

In 2012, the Committee on World Food Security of the United Nations, a body consisting of 193 governments, endorsed the VGGTs, a set of guiding principles on land tenure governance. The VGGTs developed as a result of an international consensus among governments,

¹⁷ Larsen, G. and A. Ballesteros. “Striking the Balance: Ownership and Accountability in Social and Environmental Safeguards.” Washington, D.C.: World Resources Institute, 2014, p. 40. Available at: <http://www.wri.org/publication/striking-balance-social-environmental-safeguards>

¹⁸ Arid Environmental Consultancy (Pty) Ltd. 2008. *Resettlement policy framework*. s.l. ; s.n.. <http://documents.worldbank.org/curated/en/139381468005715146/Resettlement-policy-framework>

¹⁹ United Nations. 2012.

international NGOs, civil societies, and private companies.²⁰ Although the VGGTs are not legally binding on state and non-state actors (e.g. private companies), they reflect widely accepted international human rights norms, such as the right to property, the right to housing, the right to an adequate standard of living, and other rights established in the Universal Declaration of Human Rights, International Covenant on Economic Social and Political Rights, ILO Convention 169, and the UN Declaration on the Rights of Indigenous Peoples.²¹ Private companies, governments, NGOs, and other stakeholders are increasingly accepting the VGGTs as the new international standard on land tenure.²²

The VGGTs cover a range of issues pertaining to tenure governance, such as administration of tenure, allocation and valuation of tenure rights, protection of customary and informal tenure systems, women's land rights, and other topics. Overall, the standards established in the VGGTs aim at improving land governance and protecting the tenure rights of all persons, particularly marginalized and vulnerable groups.²³ Section 16 of the VGGTs establishes a set of best practices for expropriating land and compensating and resettling affected populations.

Section 16.1 of the VGGTs calls for states to “respect *all legitimate tenure rights*, especially vulnerable and marginalized groups, by...*providing just compensation in accordance with national law*” (Emphasis added.) The VGGTs do not explicitly define “legitimate tenure”, but section 5.3 of the VGGTs states that “legitimate tenure rights inclu[de] legitimate customary tenure rights that are not currently protected by law.” The term “legitimate” is commonly defined in other international instruments as including both legal legitimacy (rights recognized by law) and social legitimacy (rights that have a broad acceptance among society).²⁴ While states presumably have flexibility in determining which tenure rights are “legitimate”, sections 9 and 10 of the VGGTs call for the respect and protection of a broad range of customary and informal tenure rights. For instance, Sections 9.4-9.6 of the VGGTs states that:

States should provide appropriate recognition and protection of indigenous peoples and other communities with customary tenure systems...Such recognition should take into account the land, fisheries and forests that are used exclusively by a community and those that are shared...where indigenous peoples and other

²⁰ Actionaid. 2012. “A Brief Introduction to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.” Available at: http://landportal.info/sites/landportal.info/files/actionaid_voluntaryguidelines_guide.pdf

²¹ ILO (International Labour Organization). 1989. Convention No. 169, Indigenous and Tribal Peoples Convention.; United Nations. 2007. Declaration on the Rights of Indigenous Peoples. G.A.Res. 61/295, U.N. Doc. A/ RES/61/295.

²² The Interlaken Group and RRI (Rights and Resources Initiative). 2015. “Respecting Land and Forest Rights: A Guide for Companies.” Washington, D.C.: The Interlaken Group and RRI.

²³ FAO (2012), Section 1.1

²⁴ Palmer, D. et al. 2009. “Land Tenure Working Paper 11: Toward Improved Land Governance.” Rome, Italy: FAO. Available at: <http://www.fao.org/3/a-ak999e.pdf>; United Nations. 2013. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. A/HRC/25/54.

communities with customary tenure systems have legitimate tenure rights to ancestral lands on which they live, States should recognize and protect these rights...States should consider adapting their policy, legal and organizational frameworks to recognize tenure systems of [IPLCs]. (Emphasis added.)

Based on sections 5.3, 9, and 16.1 of the VGGTs, it can be argued that the VGGTs recognize IPLCs as a subset of “legitimate tenure rights holders” entitled to just compensation when their land is expropriated.

Aside from the VGGTs, several other international instruments recognize the rights of communities and other informal tenure rights holders to compensation upon compulsory acquisition. For instance, Articles 10 and 28 the UN Declaration on the Rights of Indigenous Peoples (2007), Article 15 of ILO Convention 169 on Indigenous and Tribal Peoples (1989), IFC Performance Standard 7 recognize the right of indigenous communities to receive compensation for the lands, territories, and resources, which they have traditionally owned or otherwise occupied or used.²⁵ Additionally, the new World Bank Environmental and Social Framework and other policies enacted by multilateral institutions require that compensation must be provided to displaced persons regardless of whether they have a legal right to the land or assets they occupy and use.²⁶ World Bank’s O.P. 4.12 on Involuntary Resettlement makes no distinction between customary and statutory rights.

While community rights to compensation are clearly recognized by international human rights and land tenure standards and policies, a comparative analysis of whether national laws put communities at risk of expropriation without compensation has not yet been conducted. This paper seeks to fill this knowledge gap.

III. Background and Methodology

This paper examines whether communities in Asia and Africa are legally eligible for compensation when their lands are expropriated. It aims at expanding the analysis conducted for the World Resources Institute (WRI)/University of Groningen working paper entitled *Encroaching on Land and Livelihoods: How National Expropriation Laws Measure Up Against International Standards* (hereinafter “*Encroaching*”).²⁷ *Encroaching* examined whether national expropriation laws in 30 countries across Africa and Asia are adopting

²⁵ United Nations. 2007. Declaration on the Rights of Indigenous Peoples. G.A. Res. 61/295, U.N. Doc. A/RES/61/295; ILO (International Labour Organization). 1989. Convention No. 169, Indigenous and Tribal Peoples Convention; IFC (International Finance Corporation). 2012. Performance Standards on Environmental and Social Sustainability, Performance Standard 7.

²⁶ World Bank. Environmental and Social Framework, Washington, DC: World Bank Group. 2016, p. 80.

²⁷ Tagliarino, N. 2016. “Encroaching on Land and Livelihoods: How National Expropriation Laws Measure Up Against International Standards.” Working Paper. Washington, DC: World Resources Institute. Available at: <http://www.wri.org/publication/encroaching-on-land-and-livelihoods>

standards established in Section 16 of the VGGTs by providing just compensation to Indigenous Peoples and local communities with legitimate customary tenure rights. These 30 countries are:

List of countries	
<u>Asia</u>	<u>Africa</u>
1. Afghanistan	1. Burkina Faso
2. Bangladesh	2. Botswana
3. Cambodia	3. Ethiopia
4. China	4. Ghana
5. Hong Kong	5. Kenya
6. India	6. Liberia
7. Indonesia	7. Namibia
8. Kazakhstan	8. Nigeria
9. Sri Lanka	9. Rwanda
10. Malaysia	10. South Africa
11. Mongolia	11. South Sudan
12. Philippines	12. Tanzania
13. Taiwan	13. Uganda
14. Thailand	14. Zambia
15. Vietnam	15. Zimbabwe

These 30 countries were initially chosen to cover a broad geographical area in Africa and Asia. Countries were also selected based on whether there is a significant amount of land held by indigenous and local communities, and whether WRI's local partners may be well-positioned to advocate for legal reforms. These countries were also selected because they are mainly low and middle income countries, and contestation over land tends to be more active in countries with such income levels.²⁸ In the future, this study will be expanded to cover more countries, including countries in Latin America.

²⁸World Bank. Country and Lending Groups. Washington, DC: World Bank, 2015. Available at: <http://data.worldbank.org/about/country-and-lending-groups>; RRI, 2015.

Section 6 of *Encroaching* focuses on compensation entitlements and whether customary tenure holders and users of undeveloped land are eligible for compensation. This paper takes the *Encroaching* analysis a step further by examining whether these 30 countries' national laws provide potential loopholes through which governments may expropriate community land without compensating affected communities. To determine whether IPLCs are vulnerable to expropriation without compensation, this paper examines national laws in 30 countries across Africa and Asia against a set of indicators (hereinafter "compensation security indicators"). The indicators are based on the principles established in the VGGTs, particularly sections 9 and 16 of the VGGTs as discussed above in Section II. The indicators ask yes or no questions about the legal provisions established in expropriation and other national land laws. Where laws only partially satisfy the question asked by the indicator, "partial" is an answer option.

List of compensation security indicators
<ol style="list-style-type: none">1. Is compensation provided for formally recognized IPLC tenure rights?2. Is compensation provided for unregistered IPLC tenure rights?3. Is compensation provided for formally recognized IPLC tenure rights regardless of the type of land (i.e. terrestrial ecosystem) held by communities?4. Is compensation provided for formally recognized IPLC tenure rights regardless of whether the IPLCs developed or made improvements on the land?5. Is compensation for formally recognized IPLC tenure rights provided regardless of how long the land was held or used by IPLC?

Answering the questions posed by these indicators entails analyzing a broad range of national-level laws, including national constitutions, land acquisition acts, land acts, community land acts, agricultural land acts, land use regulations, and some court decisions. Finding the appropriate answer for each indicator requires an examination of both national land and expropriation statutes and regulations. Section V and the Appendix of this paper provide additional information on the justifications for each country's indicator scores.

To assess whether IPLCs are granted a level of tenure security sufficient to obtain compensation, findings and analyses from *LandMark*'s ten legal indicators on the legal security of indigenous and community land were also examined.²⁹ The *LandMark* legal indicators

²⁹*LandMark* is a global online platform of indigenous and community land. L. Alden Wily, N. Tagliarino, Harvard Law and International Development Society (LIDS), A. Vidal, C. Salcedo-La Vina, S. Ibrahim, and B. Almeida.

examine the tenure security of community land by focusing on the extent to which the law upholds the land rights of IPLCs, and whether these rights are protected through formalization and recognition of community-based governance. The *LandMark* legal indicators relate to the issue of compensation eligibility because, depending on the extent to which community land is formally recognized and protected, communities may be vulnerable to expropriation without compensation (e.g. if compensation can only be obtained by formal tenure rights holders). Since the *LandMark* legal indicators draw a distinction between laws applicable to indigenous communities and those applicable to non-indigenous communities, the table in the Appendix notes whether laws are applicable to indigenous, non-indigenous communities, or all communities.

While every attempt was made to ensure that only accurate, reliable, and current information was used to answer the compensation security indicators, there are several important caveats regarding this paper. First, it focuses on binding national-level statutory and regulatory laws relating to expropriation, compensation, and IPLC tenure security. The analysis does not comprehensively assess how compensation procedures are implemented or enforced on the ground (i.e. whether communities are actually compensated in practice). The analysis examines whether compensation is provided when land is expropriated; this paper does not address compensation (or lack thereof) for other types of land transfers.³⁰ The analysis focuses on compensation rights pertaining to land, and does not assess whether compensation is provided for water or subsoil rights (e.g. mineral rights). The analysis does not include an assessment of sub-national laws. The analysis is based on a desk review of national-level expropriation laws, land laws, and secondary sources available online, including the World Bank's Land Governance Assessment Framework (hereinafter "LGAF").³¹ While the analysis is based on a broad range of legal instruments (see Appendix), there may be additional laws that are not available online and therefore not accounted for in the analysis. Some of the laws assessed were unofficial English-translated versions of laws originally written in non-English languages. In some cases, unofficial translations may alter the original meaning and therefore the interpretation of the legal provisions assessed. The findings are based on the author's legal

2016(c). Indicators of the Legal Security of Indigenous and Community Lands. Data file from LandMark: The Global Platform of Indigenous and Community Lands. Available at: www.landmarkmap.org.

³⁰ In parts of Africa and other regions, where all land is legally owned "or held in trust for the people" by the government, governments are not always required to follow expropriation procedures when infringing on land and resource rights. Governments can often designate, convert, lease, allocate, grant concessions to, or otherwise alienate the land without following expropriation procedures. The legal question of whether expropriation procedures apply is complex and can only be answered on a case-by-case basis. This paper examines whether compensation rights are recognized and protected by law, assuming that national-level expropriation procedures apply.

³¹ World Bank. Land Governance Assessment Framework. Washington, DC: World Bank Group, 2016 Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTPROGRAMS/EXTARDR/EXTLGA/O,,contentMDK:23378317~pagePK:64168445~piPK:64168309~theSitePK:7630425,00.html>

interpretations of the laws assessed, and therefore the findings may contain an element of subjectivity. The study focuses on whether laws establish explicit or implicit restrictions on compensation rights. In the absence of explicit or implicit restrictions established in laws, indicator scores received a “yes” score, meaning the question posed by the indicator is answered in the affirmative. The analysis conducted for this paper addressed laws in effect as of December 31, 2016. Laws that were passed after this date are not accounted for in the analysis.

IV. Who Can Benefit from this Research?

By examining a broad range of national laws against legal indicators, this paper provides insight on the global legal landscape and its current trends with respect to compensation procedures. The findings from the research establish a benchmark for progress that can assist civil society organizations, non-governmental organizations (NGOs), policymakers, lawmakers, advocates, investors, and other stakeholders in measuring government progress towards adopting the VGGT standards on compensation in domestic laws. The findings can also be used to inform policy decisions and monitor the progress of the Global Call to Action on Indigenous and Community Lands, a new initiative convened by Oxfam, the International Land Coalition, and Rights and Resources Initiative, which aims at doubling the amount of legally recognized community land by 2020.³²

Affected populations and land rights advocates can use this analysis to better understand their tenure rights, including whether these rights are vulnerable to expropriation without compensation. In countries where land laws are weak, and communities are vulnerable to expropriation without compensation, affected populations and advocacy groups can use this analysis to galvanize support for passing legal reforms. In countries where land laws are strong, and communities are eligible for full compensation, affected populations, lawyers, and advocacy groups can use this analysis to hold governments and private actors accountable for following such laws.

This analysis can also support companies engaging in activities that involve expropriation, compensation, and resettlement. Companies can use this paper to understand international standards and best practices, and also the domestic legal frameworks of the countries in which they make land investments and implement activities that require expropriation and compensation payments to affected populations.

³² See landrightsnow.org

Lastly, this paper has academic value because it presents an innovative methodology for assessing a broad range of laws, and can inform policy debates on “fair compensation” among scholars, practitioners, and policymakers. For instances, this paper is designed to support a new Dutch Government initiative, which is currently being implemented by True Price and the University of Groningen.³³ The initiative seeks to review international guidelines and develop a new Protocol on Fair Compensation for international adoption. This analysis can contribute to the protocol by informing policy debate on “fair compensation”, highlighting key gaps in domestic compensation procedures, and recommending legal reforms for adopting international standards on compensation.

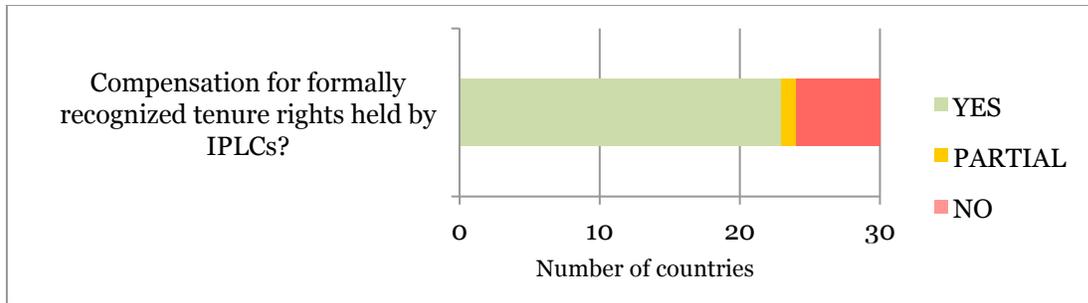
V. Research Findings and Analysis

a. Compensation for formally recognized tenure rights held by IPLCs³⁴

As discussed above, IPLC rights to compensation are recognized in sections 9 and 16 of the VGGTs and other international instruments, such as the UN Declaration on the Rights of Indigenous Peoples. However, this section’s analysis focuses on whether national legal frameworks provide compensation for formally recognized community tenure rights when community land is acquired in a compulsory manner. Since payment of compensation is usually conditional on showing a legally recognized right to land, national-level legal frameworks were assessed, using the *LandMark* legal indicators, to determine whether laws recognize the land rights of IPLCs to such an extent that the IPLCs qualify for compensation. For instance, if national laws only grant communities rights to use land on a temporary basis, but the national expropriation laws establish that compensation is only payable to freehold landowners, then such laws do not ensure that communities are entitled to compensation upon expropriation.

³³ True Price & University of Groningen. “Towards a protocol on fair compensation in case of land tenure changes. Input document to a participator process.” Study commissioned by the Organising Committee of the Dutch Land Governance Multi-Stakeholder Dialogue. Amsterdam, the Netherlands: True Price: 2016

³⁴ This section examines whether national statutory and regulatory laws recognize the rights of communities to obtain expropriation. This paper does not address whether laws ensure that compensation is allocated to community members themselves as opposed to paramount chiefs or governing bodies. Further research is needed on this issue of “elite capture” of compensation.



By analyzing compensation provisions together with legal frameworks on community tenure, it was found that 23 of the 30 countries assessed³⁵ have the laws that grant compensation to communities with formally recognized tenure rights. In most of these 23 countries, national expropriation laws establish that any person with a recognized tenure right or “interest” in land is eligible to submit a claim for compensation. Therefore, the key question is whether IPLCs have recognized tenure rights established in national laws. In these 23 countries, there is a broad range of formally recognized tenure rights held by IPLCs, ranging from ownership to temporary use rights. In some countries, the expropriation laws indicate that compensation is only provided for ownership rights, and thus green “yes” scores were only provided if national land laws grant communities ownership rights to land. In other countries, such as Vietnam, national expropriation laws stipulate that compensation may be provided for use rights, and so green “yes” scores were provided if land laws grant communities rights to use land. In countries for which World Bank Land Governance Assessment Framework (LGAF) data is available, findings from the indicators analysis were also cross-examined with LGAF data.

In a few of these 22 countries (e.g. Malaysia, South Sudan, Taiwan, Philippines, and China), national laws explicitly provide that communities with customary tenure rights are entitled to compensation. For example, Article 42 of China’s Property Rights Law (2007) provides “for expropriation of collectively-owned land, such fees shall be as compensations for the land expropriated.” Such explicit legal provisions provide communities with a degree of certainty that they will be eligible for compensation if the government decides to expropriate their property. Lack of clear and explicit legal rights may increase the risk of governments sidestepping compensation requirements when compulsorily acquiring community land.

Cambodia received a “partial” score because the laws provide compensation is provided to indigenous landowners. However, non-indigenous local communities are not entitled to

³⁵ Afghanistan, Botswana, Burkina Faso, China, Ethiopia, Ghana, India, Indonesia, Kenya, Liberia, Malaysia, Namibia, Nigeria, Philippines, Rwanda, South Africa, South Sudan, Taiwan, Tanzania, Uganda, Vietnam, Zambia, Zimbabwe

compensation because they are only granted legal rights to use traditional forests, and payment of compensation is conditional on proving ownership.³⁶

Six of the 30 countries assessed (Bangladesh, Hong Kong, Kazakhstan, Mongolia, Sri Lanka, Thailand) have national laws that do not provide communities with a right to compensation. In Thailand and Mongolia, communities are only granted rights to use state-owned property for limited period of time, and the government retains broad discretion to revoke these use rights without compensation.³⁷ Likewise, Kazakhstan's national laws do not formally recognize the rights of local communities. In practice, Kazakh communities sometimes manage municipal pastures, but communities are not granted explicit legal rights to these state-owned lands.³⁸ Hong Kong's Basic Law (1990) vaguely recognizes the "traditional rights and interests" of Indigenous inhabitants in the Northern Territory; however, the Land Resumption Ordinance (1998) only provides compensation to registered property owners of land and there is no clear legal process by which communities can obtain ownership rights.³⁹ In Bangladesh and Sri Lanka, national-level laws do not explicitly recognize the tenure rights of IPLCs, and expropriation laws do not grant communities a right to receive compensation upon expropriation. These countries' land laws are in particular need of reform, given that a large percentage of rural populations in these countries, many of which are Indigenous, are either landless, own very little land, or live in informal settlements located on government property.⁴⁰

b. Compensation for formally recognized IPLC tenure rights regardless of whether those rights are registered

As discussed in section II, the VGGTS call for the recognition and protection of legitimate tenure rights, whether formally recorded or not.⁴¹ For this reason, this section's analysis focuses

³⁶ Government of Cambodia. 2001. Law on Land, art. 25; Government of Cambodia. 2002. Law on Forestry (2002), Article 42; Government of Cambodia. 2012. Law on Expropriation: Article 16 and 22.

³⁷ See legal indicator analyses of Thailand and Mongolia at www.landmarkmap.org.

³⁸ Ibid.; RRI(2015).

³⁹ Hong Kong's national laws do not provide a clear process by which Indigenous inhabitants can obtain formally recognized ownership rights to their land. Government of Hong Kong. 1990. Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China Government of Hong Kong. 1998. Land Resumption Ordinance, Section 2 and 8.

⁴⁰ In Bangladesh, "fifty-two percent of the rural population, which accounts for almost 75% of the country's population, is landless or holds less than .5 acres of land." A 1992 survey found that communities affected by six government flood-control projects suffered from poor compensation, low-land valuation, delayed land payments, litigation charges, and the requirement of bribes. United States Agency for International Development (USAID). Property Rights and Resource Governance Profile: Bangladesh. Available at: <http://www.land-links.org/country-profile/bangladesh/>

⁴¹ FAO (2012), sections 3.1 and 5.3.

on whether legal processes for registering community rights are mandatory or voluntary, and whether communities can still obtain compensation even when their land rights are not formally registered.

Simply because an expropriation law grants compensation for recognized community tenure rights does not necessarily mean that all communities will be eligible for compensation upon expropriation. In many countries, there may be registration requirements and other procedures that communities must satisfy in order to achieve formal recognition and obtain compensation.

Registration processes can often be difficult to access, time-consuming, and expensive for communities.⁴² Registration requirements often stipulate that communities must demarcate clear boundaries around their land, establish clear governance structures, obtain approval from land surveyors and other officials, and fulfill other cumbersome tasks. In Peru, for example, Indigenous forest communities must clear 27 bureaucratic hurdles to achieve official recognition and formal land titles; this process can take more than a decade.⁴³ Registration may also inhibit effective governance of community land by causing the evaporation of customary tenure systems, if, for example, registration requirements impose an obligation on communities to establish new boundaries and governance structures that were not previously existent under the customary tenure system. According to Deininger (2003), registering the boundaries of all lands held by the community, and then allowing the community to define individual rights within that community land boundary, can be much more cost-effective than registering individual rights within a community.⁴⁴

If registration is required to obtain compensation, many of the world's communities are at risk of being uncompensated. For example, in India, where registration is required to receive compensation for customary forest rights, the process for registering customary forest lands under the Forest Rights Act (2006) has been riddled with delays.⁴⁵ As of 2015, it was estimated that only 3.4 million hectares were formally registered in India.⁴⁶ However, approximately 40 million hectares of forest land, an area estimated to be populated by 150 million people (90

⁴² Hanstad, T. "Designing Land Registration Systems for Developing Countries." *American University International Law Review* 13(3): 647–703, 1998. Available at: <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1358&context=auilr>

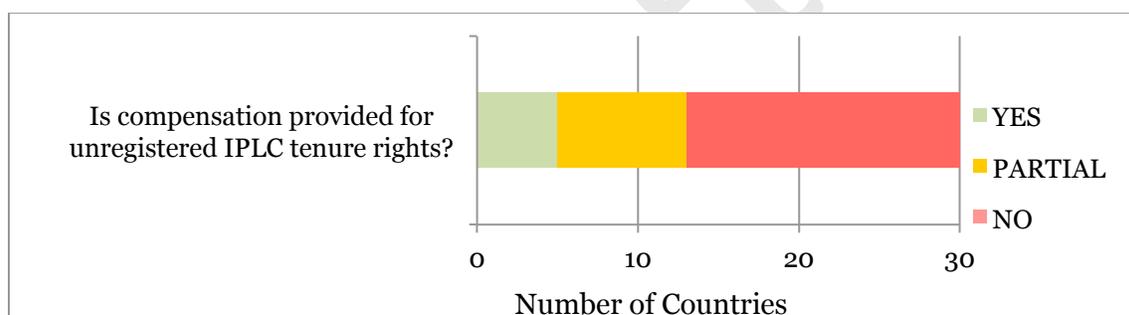
⁴³ Rainforest Foundation US. "Getting a Land Title in Peru is Almost Impossible for Indigenous Communities." UK: Available at: <http://www.rainforestfoundation.org/landtitlesperu/>

⁴⁴ Deininger, K. *Land policies for growth and poverty reduction*. Washington, DC: The World Bank & Oxford: Oxford University Press, 2003.

⁴⁵ Times of India. 2013. "Explaining delay in implementing forest rights in Mahan: Tribals" New Delhi: Times of India, 2013. Available at: <http://timesofindia.indiatimes.com/city/bhopal/Explain-delay-in-implementing-forests-rights-in-Mahan-Tribals/articleshow/21815227.cms>

⁴⁶ RRI (2015a).

million tribal people), remain eligible for registration under the Forest Rights Act.⁴⁷ According to the World Bank Land Governance Assessment (LGAF) study of India, “missing, inaccurate, and outdated records... make it difficult to provide compensation.”⁴⁸ In Ethiopia, where formal registration is required to receive recognition and compensation,⁴⁹ unrecorded rights, such as the right to gazing, access, and gathering forest products are usually not compensated, according to the World Bank LGAF study.⁵⁰ It is estimated that over 66% of community lands are not formally recognized, which suggests that most of Ethiopia’s community land may be vulnerable to expropriation without compensation.⁵¹ In 2010, expropriation of Ethiopia’s Gambella farmland displaced affected communities without compensation because they lacked formal certificates to their land.⁵² Likewise, in Ghana, where compensation is limited to registered or documented rights, the law has, in some cases, allowed for non-community members, with formal, written land leases granted by traditional authorities, to become eligible for compensation, while undocumented communities members who actually lived on expropriated land remained ineligible for compensation.⁵³



Only five of the 30 countries assessed (Philippines, South Sudan, Tanzania, Uganda, and Zambia) have laws that grant communities the right to obtain compensation regardless of whether their land rights are formally registered or not. Tanzania’s Land Act (1999), for instance, “pay full, fair and prompt compensation to any person whose right of occupancy or

⁴⁷ Rights and Resources Initiative et al. 2015b. Potential for Recognition of Community Forest Resource Rights Under India’s Forest Rights Act. Washington, D.C.: RRI. Available at: http://rightsandresources.org/wp-content/uploads/CommunityForest_RR_A4Final_web1.pdf

⁴⁸ World Bank. Land Governance Assessment National Synthesis Report (India), 2016.

⁴⁹ Ethiopian communities must show a "holding certificate" which is defined as a certificate of title issued by a competent authority as proof of rural land use right. Government of Ethiopia. 2005. Rural Land Administration and Land Use Proclamation, sections 2(14) and 6(1).

⁵⁰ World Bank. Land Governance Assessment Synthesis Report (Ethiopia), 2016.

⁵¹ Dubertret, F. and L. Alden Wily. 2015.

⁵² Vhughen, D., and A. Gebru. “Large-Scale Acquisitions of Land in Ethiopia.” Focus on Land in Africa Brief, 2013. Available at: <http://www.focusonland.com/fofa/en/countries/brief-large-scale-land-aquisition-in-ethiopia/>

⁵³ Larbi et al. "Compulsory Land Acquisition in Ghana—Policy and Praxis." Land Use Policy, **21** (2), Pages 115-127, 2004.

recognized long-standing occupation or customary use of land is revoked..."⁵⁴ It is not obligatory for customary landholders to register their village lands in order to receive compensation.⁵⁵ Likewise, in South Sudan, the right to compensation is granted regardless of registration; compensation is guaranteed for any person customarily occupying expropriated land.⁵⁶ Under South Sudan's Land Act (2009), "rights of ownership and derivative rights to land may be proven by any other practices recognized by communities in Southern Sudan in conformity to equity, ethics, and public order."⁵⁷ In these five countries, IPLC legal rights to compensation are strong; however, further research is needed regarding whether these laws are actually being enforced on the ground.

Eight of the 30 countries (Afghanistan, Burkina Faso, India, Kenya, Liberia, Rwanda, South Africa, and Vietnam) received a "partial" score for this indicator because their national laws contain provisions indicating that some (but not all) communities may be afforded compensation even without obtaining formally registered land rights. In Liberia, for example, the Community Rights Law, 2009 provides that "to be registered as customary land, it is not necessary for the land to have been registered under statutory entitlements," but the law only recognize customary rights to forest lands, and not pastures and other types of land customarily held by communities.⁵⁸ It is unclear that communities in pastures and other non-forest land areas are entitled to compensation without registration. The 2014 version of Liberia's Draft Land Rights Act aims at providing greater security for and clearer definitions of community land; however, passage of this law is still pending.⁵⁹ South Africa also received a "partial" score because its Interim Protection of Informal Land Rights Act 1996 (amended 2015) provides legal protection for informal tenure rights holders, and compensation upon expropriation, but specifically excludes tenants from protection under the law.⁶⁰ Thus, South African communities who hold land as tenants may be vulnerable to expropriation without compensation. Rwanda received a "partial" score because, although obligatory to prove land ownership,⁶¹ registration is

⁵⁴ Government of Tanzania. 1999. Land Act, Sec. 3(g).

⁵⁵ Alden Wily, L. "Community-based land tenure management: Questions and answers about Tanzania's new Village Land Act, 1999." Issue Paper no. 120. International Institute for Environment and Development, 2003. Available at: <http://pubs.iied.org/pdfs/9295IIED.pdf>.

⁵⁶ Dubertret, F. and L. Alden Wily. 2015. Percent of Indigenous and Community Lands. Data file from *LandMark: The Global Platform of Indigenous and Community Lands*. Available at: www.landmarkmap.org; Government of South Sudan. 2009. Section 75(3).

⁵⁷ Government of South Sudan. 2009. Land Act, Section 39(3).

⁵⁸ Government of Liberia. 2008. An Act to Establish Community Rights Law of 2008 with Respect to Forest Lands, Sec. 1.3.

⁵⁹ Government of Liberia. Draft Land Rights Act 2013 (pending). Available at:

http://www.sdiliberia.org/sites/default/files/publications/Land%20Rights%20Act_full%20draft.pdf

⁶⁰ Government of South Africa. 2015. Interim Protection of Informal Land Rights Act 31 of 1996 (amended 2015), Sec. 1(iii); See World Bank. 2016. Land Governance Assessment Framework Synthesis Report of South Africa.

⁶¹ Government of Rwanda. 2015 Organic Land Law, Article 30.

not necessarily required to receive compensation for expropriation; alternatively, an affected person can submit testimony from his or neighbors stating that he or she has ownership rights to the expropriated land.⁶² Kenya received a “partial” score because, under Kenya’s Constitution and national land laws, for instance, unregistered community lands remain vested in local government bodies as trustees until the community obtains formal entitlements through registration.⁶³ Kenya recently passed a new Community Land Act 2016. This Act triggered a “partial” score for Kenya because the law recognizes compensation for community land based on customary occupation, but the payment of compensation is withheld from communities until they receive formal entitlements.⁶⁴ Only when communities obtain formal entitlements are they provided compensation.

Seventeen of the 30 countries assessed⁶⁵ do not have laws that provide compensation for formally recognized IPLC tenure rights regardless of whether those rights are registered. Unless and until their tenure rights are registered, communities in these 17 countries remain vulnerable to expropriation without compensation.

c. Compensation for formally recognized IPLC tenure rights regardless of the type of land (i.e. terrestrial ecosystem) held by IPLCs

Section 9.5 of the VGGTs provides that “where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights *to the ancestral lands on which they live*, States should recognize and protect these rights” (Emphasis added.) Section 8.3 of the VGGTs states that “noting that there are publicly-owned land, fisheries and forests that are collectively used and managed (in some national contexts referred to as commons), States should, where applicable, recognize and protect such publicly-owned land, fisheries and forests and their related systems of collective use and management.” Based on this provision, it can be argued that, in order to adopt the VGGTs, states should recognize community claims to *all* ancestral lands and common properties, and, upon expropriation, provide compensation to affected communities, regardless of the type of land (i.e. terrestrial ecosystem).

⁶² Government of Rwanda. 2007. Law No. 18/2007 Relating to Expropriation in the Public: Article 18.

⁶³ Government of Kenya. 2010. Constitution, Article 63. In 2016, the Kenyan government passed a new Community Land Bill, which establishes a clearer process for defining and registering community lands; however, the laws still mandates that registration is compulsory in order to receive formal titles. Alden Wily, L. 2016(d). “The load to land titling: Kenya finally enacts new laws.” Thompson Reuters Foundation News. Available at: <http://news.trust.org/item/20160902102932-xsime/>

⁶⁴ Alden Wily, L. “The Community Land Act: Now it is up to Communities” Nairobi, Kenya: The Star. 2003; Government of Kenya. 2016. Community Land Act, Section 6(2)-6(3).

⁶⁵ Bangladesh, Botswana, Cambodia, China, Ethiopia, Ghana, Hong Kong, Indonesia, Kazakhstan, Malaysia, Mongolia, Namibia, Nigeria, Sri Lanka, Taiwan, Thailand, and Zimbabwe

The analysis in this section focuses on the legal definitions of community land, the definitions of government (or public) land, and whether those definitions effectively limit the types of land to which communities can obtain formal rights and thus compensation. This section's analysis was conducted using the findings from *LandMark* legal indicators 8 and 10, which examine whether communities have recognized rights in forests and protected areas. If governments claim ownership or control over all forest reserves or protected areas, communities living in these areas may be ineligible for compensation upon eviction. Likewise, when laws only recognize community rights to certain land areas (e.g. forest lands), there is a risk that communities living outside of these areas will not be compensated when their land is expropriated. For example, in India, where national laws only recognize IPLC compensation rights to forest lands, which account for only around 23% of the country's land area.⁶⁶ Registration of common properties outside of forests remains weak, according to the World Bank's Land Governance Assessment study of India.⁶⁷ Even in parts of India where subnational laws recognize community rights to non-forest commons, community land rights are often not recorded.⁶⁸

How national laws define public, private, and communal properties directly affects whether communities will be entitled to compensation upon expropriation. For instance, communities living on land which is statutorily classified as exclusively "public property" or "state land" may not be entitled to compensation if expropriation and compensation procedures only apply when privately held land is acquired for a public purpose. According to Wily (forthcoming), when the state claims ownership rights over lands and resources, "even acknowledged derivative rights can be seriously undermined at compulsory acquisition on grounds that the state owns all land or all resources anyway."⁶⁹ On land that is state-owned and to which expropriation procedures do not apply, governments often may lease, transfer or otherwise manage and use state land for a range of private purposes without paying compensation. In South Sudan, for example, when state land is leased, the procedures applicable to compensation must be established in lease agreements; the compensation procedures established in the Land Act do not apply.⁷⁰ Under such circumstances, communities may be particularly vulnerable to expropriation without compensation, since there is no guarantee that these lease agreements will provide compensation to affected communities, who would be third parties to lease agreements.

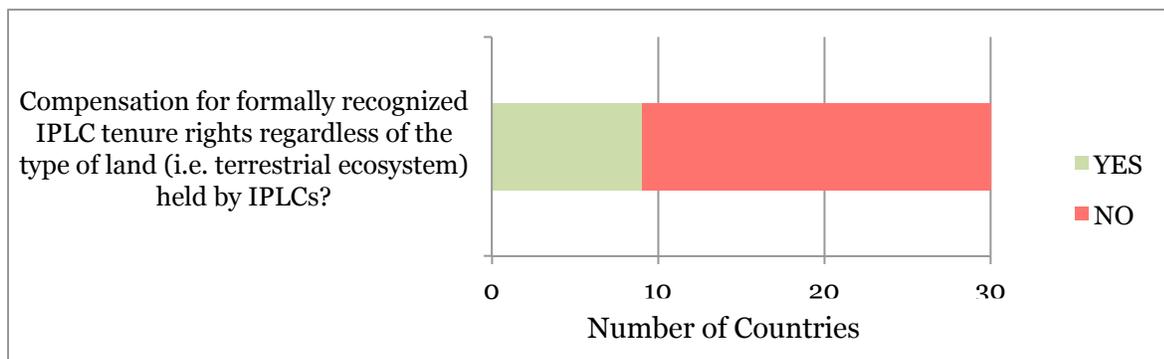
⁶⁶ Government of India. 2009. National Ministry of Environment and Forests. State of the Environment Report. Available at: http://www.moef.gov.in/soer/2009/SoE%20Report_2009.pdf

⁶⁷ World Bank. 2016. Land Governance Assessment National Synthesis Report. Available at: <http://documents.worldbank.org/curated/en/643361468038336423/pdf/AUS18306-WP-PUBLIC-P153485.pdf>

⁶⁸ Ibid.

⁶⁹ Alden Wily, L. Forthcoming. Compulsory Acquisition as Constitutional Matter: The Case in Arica.

⁷⁰ Government of South Sudan. 2009. Land Act, Section 27(8).



In nine of the 30 countries assessed,⁷¹ national laws provide compensation for community land and do not limit the types of land (i.e. terrestrial ecosystems) to which communities can obtain rights. For example, China’s Property Law (2007) broadly defines collectively owned property as “lands, forests, mountains, grasslands, unclaimed land and beaches owned collectively.”⁷² The Philippines and Taiwan also have laws that define community land broadly, and do not designate certain ecosystems as exclusively “public land”, thus prohibiting communities from claiming land located within these ecosystems. For example, under Taiwan’s Indigenous Peoples Basic Act (2005) “Indigenous Peoples Regions” are defined as “as all areas within which Indigenous Peoples traditionally live...”⁷³ The Philippines’ Indigenous Peoples Rights Act, 1997 defines Indigenous Ancestral Domains as including “forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water.”⁷⁴

In contrast, 21 of the 30 countries assessed⁷⁵ have national laws that do not provide compensation for IPLC tenure rights regardless of the type of land held by the IPLCs. For example, the national laws enacted in India, Indonesia, and Liberia only grant customary rights to forest lands, but not to other types of lands commonly held by communities, such as rangelands, wetlands, deserts, and other common properties. Namibia and Zimbabwe provide compensation for agricultural land, and Ethiopia and Nigeria provide compensation for both grazing and agricultural land. However, none of these countries have laws that provide compensation for other types of communally held property. In Botswana, Kenya, Rwanda,

⁷¹ Burkina Faso, China, Ghana, Philippines, South Africa, Taiwan, Tanzania Vietnam, and Zambia

⁷² Government of China. 2007. Property Rights Law, Article 58.

⁷³ Government of Taiwan. 2005. Indigenous People’s Basic Law, Article 2(3).

⁷⁴ Government of the Philippines. 1997. Indigenous Peoples’ Rights Act, Article 3.

⁷⁵ Afghanistan, Bangladesh, Botswana, Cambodia, Ethiopia, Hong Kong, India, Indonesia, Kazakhstan, Kenya, Liberia, Malaysia, Mongolia, Namibia, Nigeria, Rwanda, South Sudan, Sri Lanka, Taiwan, Thailand, Uganda

Uganda, and South Sudan, national land laws explicitly establish that certain types of land areas are exclusively state-owned property, meaning that communities are limited in the types of lands to they may claim compensation. For instance, Rwanda’s Organic Law 05/2008 defines “public land” as including protected areas, swamps, wetlands, national parks, forest reserves, historical sites, and other cultural sites, memorials.⁷⁶ Rwanda’s laws suggest that, since communities cannot obtain formally recognize tenure rights to these “public land” areas, they would not be entitled to compensation. Likewise, Cambodia’s, Kenya’s, Uganda’s, and South Sudan’s laws establish that forest reserves, wetlands, and other protected areas are public or state land. In some of these countries (e.g. Kenya), communities are granted rights to use state-owned land, but are not granted rights to compensation.

Countries with limits on IPLC tenure rights in national parks, wetlands and forests	Countries with limits on IPLC tenure rights outside of forest areas	Countries in which compensation for IPLC tenure rights is limited to agricultural, grazing, farm, or cultivated land
Afghanistan Botswana Cambodia Kenya Rwanda South Sudan Uganda	India Indonesia Liberia	Cambodia Ethiopia Nigeria Namibia Zimbabwe

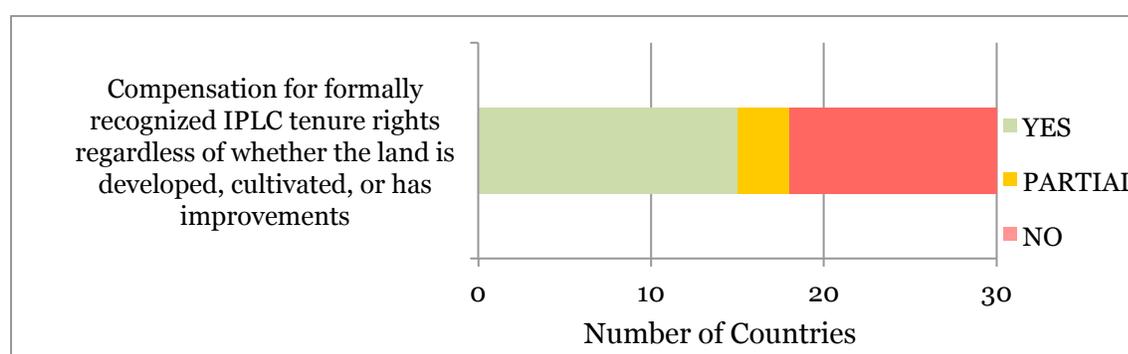
d. Compensation for formally recognized IPLC tenure rights regardless of whether the land is developed, cultivated, or has improvements⁷⁷

Section 9.7 of the VGGTs provides that “States should, in drafting tenure policies and laws, take into account the social, cultural, spiritual, economic and environmental values of land...held under tenure systems of indigenous peoples and other communities with customary tenure systems.” These provisions suggest that, in order for states to adopt the VGGTs, they

⁷⁶ Government of Rwanda. 2005. Organic Law No. 08/2005.

⁷⁷ The *Encroaching* paper included an indicator on whether compensation is provided for undeveloped commons. After re-examining and reinterpreting the compensation laws in all 30 countries, the author, in this paper, revised some of the findings on compensation for undeveloped land.

must not only base compensation on the fair market value of crops, buildings, and other improvements (i.e attached and unattached assets on the land), they must also compensate for undeveloped or uncultivated lands traditionally held by communities with customary tenure. Across Asia and Africa, there are millions of hectares of grasslands, woodlands, wetlands, deserts, pastures, and other undeveloped commons, which communities use for grazing livestock, hunting animals, and other livelihood needs (e.g. ancestral burial grounds).⁷⁸ Without statutorily recognized rights to compensation regardless of whether the land is developed or cultivated, communities who customarily hold and use undeveloped commons may be not be compensated when these areas are expropriated.



Fifteen of the 30 countries⁷⁹ grant compensation for community land regardless of whether that land is developed, cultivated, or has improvements. These countries have compensation provisions, which broadly provide for compensation based on the value of the land itself, as opposed to the land’s improvements (i.e. the land’s attached and unattached assets, including crops and buildings). Afghanistan, Zimbabwe and Tanzania received partial scores because their national laws suggest compensation may, at least in some cases, be limited to improved or developed land.⁸⁰ For example, as highlighted by Veit et al. (2008), the Tanzanian government is only required to pay compensation for land not classified “vacant”, and “where the development of any land acquired...is inadequate, whether such land is in an urban are or in a

⁷⁸ Alden Wily. 2011.

⁷⁹ Botswana, Burkina Faso, Ghana, India, Indonesia, Kenya, Liberia, Malaysia, Philippines, Rwanda, South Africa, South Sudan, Taiwan, Uganda, and Vietnam

⁸⁰ Article 72 of the Constitution of Zimbabwe (2013) states “where agricultural land...is required for a public purpose...no compensation is payable in respect of its acquisition, except for improvements.” However, section 12 of the Communal Land Act (1983) and section 20 of the Land Acquisition Act (2002) indicate that compensation is not limited to the value of the improvements when non-agricultural community land is expropriated.

rural area, any compensation awarded shall be limited to the value of the unexhausted improvements of the land.”⁸¹ Agricultural and pastoral lands are not considered vacant but must be in “good estate management” to be eligible for compensation.⁸²

In contrast, 12 of the 30 countries assessed have laws that do not provide compensation for IPLC tenure rights regardless of whether their land is developed, cultivated or has improvement. Cambodia, China, Ethiopia, Namibia, Nigeria, and Zimbabwe have laws that require that communities cultivate, develop, or improve the land in order to receive compensation. For example, Nigeria’s Land Use Act, 1978 (CAP 202) provides that customary land rights cannot be granted for areas of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor.”⁸³ Under this provision, communities must graze the land or conduct agricultural activities to qualify for a formal land right, and thus be entitled to compensation for expropriation. Likewise, in Namibia, recognized customary rights are only granted for farming and residential units, and compensation is limited to improvements made on the land.⁸⁴ In China, compensation is limited to agricultural outputs (yields) and land-attached assets.⁸⁵ A survey of Chinese farmers affected by expropriations found that farmers often did not receive adequate, consistent treatment in terms of sufficiency of compensation.⁸⁶

e. Compensation for formally recognized IPLC tenure rights regardless of how long the land was held or used by the IPLCs

This section’s analysis focuses on whether national laws adopt this principle by granting compensation for IPLC tenure rights regardless of how long the land was held or used by the IPLCs. As discussed above, Section 9.5 of the VGGTs provides that “where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights *to the ancestral lands on which they live*, States should recognize and protect these rights” (Emphasis added.) It can be implied from this provisions that recognition and protection of community tenure rights should not only apply to communities who have held or used land for a certain

⁸¹ Government of Tanzania. 1967. Land Acquisition Act, Secs. 12(1)-(2).

⁸² Government of Tanzania. 1967. Land Acquisition Act, Sec. 12(5)(b); Veit, P. et al. (2008).

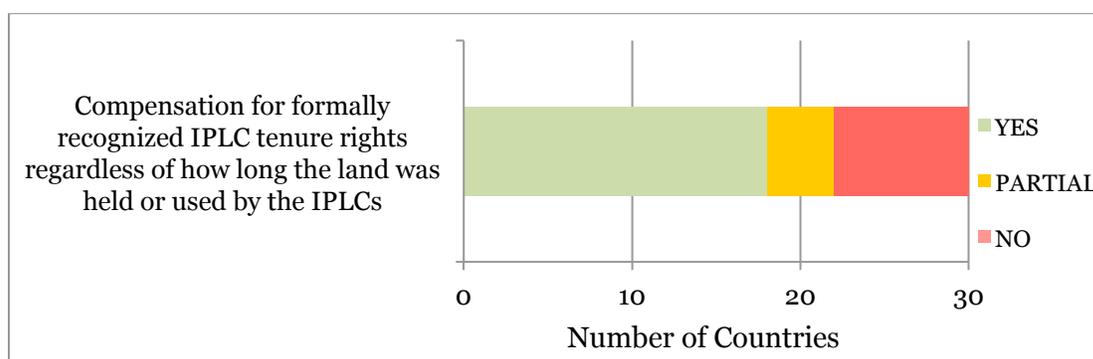
⁸³ Government of Nigeria. 1978. Land Use Act, Sec. 6(2).

⁸⁴ Government of Namibia. 2002. Communal Land Reform Act, Sections 40 and 42.

⁸⁵ Government of China. 1986(amended 2004). Law on Land Administration, Art. 47.

⁸⁶ Keliang, Z., R. Prosterman et al. “The Rural Land Question in China: Analysis and Recommendations Based on a Seventeen-Province Survey. *International Law and Politics* 38: 761-839, 2006. Available at: <http://nyujilp.org/wp-content/uploads/2013/02/38.4-Keliang.pdf>

period of time, but to all communities. Moreover, legal procedures for proving how long community ancestors have held and used a particular tract of land are likely to be slow and ineffective since it is difficult to ascertain when exactly a community began using and depending on a particular tract of land. Setting arbitrary time requirements may effectively exclude certain communities with legitimate claims from obtaining compensation.



Eighteen of 30 countries⁸⁷ have laws that grant compensation for community land regardless of how long the land has been held or used by the IPLC. South Africa, Tanzania, and Zambia received “partial” answers because their laws indicate that, for pastures and agricultural lands, communities must prove they have used the land for at least two years prior to the expropriation.⁸⁸ Cambodia received a “partial” score because indigenous communities do not need to satisfy a time requirement to receive compensation, but non-indigenous communities are not entitled to compensation.

Eight of the 30 countries have laws that do not provide compensation for formally recognized IPLC tenure rights regardless of how long the land was held or used by the community. In India and Namibia, for example, communities must prove they have held and used the expropriated land for a specified period of time in order to qualify for compensation. In India’s the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, affected families must prove their “primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies...[and] affected due to acquisition of land.”⁸⁹ Under India’s Forest Rights Act, 2006, forest communities must prove they “primarily resided in and [depended] on the forest or forest land for bona fide

⁸⁷ Botswana, Burkina Faso, China, Ethiopia, Ghana, Indonesia, Kenya, Liberia, Malaysia, Namibia, Nigeria, Philippines, Rwanda, South Sudan, Taiwan, Uganda, Vietnam and Zimbabwe

⁸⁸ Government of Zambia. 1970. Land Acquisition Act, Section 15(3).

⁸⁹ Government of India. 2013. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, Section 3(c)(iv).

livelihoods needs” for at least three generations prior to December 13, 2005 in order to qualify for formal recognized community forest rights, and receive compensation for forest rights lost due to compulsory acquisition.⁹⁰

V. Recommendations

This paper aims to establish a benchmark for progress to assist civil society organizations, NGOs, policymakers, advocates, affected populations, investors, and other stakeholders in measuring government progress towards adopting VGGT standards on compensation in domestic laws. In many of the countries assessed, there are broad limitations on community rights to obtain compensation when their lands are expropriated. These legal hurdles must be addressed if national laws are to adopt the VGGT standards, which call for states to ensure that compensation for the legitimate tenure rights of IPLCs is provided. Strong legal rights to compensation are necessary but insufficient to ensure communities are compensated. Governments must also respect and enforce legal rights to compensation.

Based on the findings from the research, here are four recommendations for ensuring the VGGTs are adopted and compensation for community tenure rights is provided:

1. Laws should require that governments provide compensation for unregistered IPLC tenure rights. Acquiring bodies⁹¹ should be required to consult and reach an agreement with affected communities regarding compensation amounts. To conform to the VGGTs, states must protect and respect the legitimate tenure rights of IPLCs. Although the term “legitimate” is left undefined in the VGGTs, this term is defined in other international instruments as including both legal legitimacy (rights recognized by law) and social legitimacy (rights that have a broad acceptance among society).⁹² For this reason, states should initiate flexible systems that look beyond registered property rights when determining who is entitled to compensation. In order for governments to adequately and effectively assess the “social legitimacy” of tenure rights held by IPLCs, they should survey the affected land and conduct in-person consultations and negotiations with affected communities.

⁹⁰ Government of India. 2006. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, Section 2(o).

⁹¹ Acquiring bodies are the government and private entities that carry out the expropriation, compensation, and resettlement processes, including government departments, ministries, and agencies or, in some cases, private entities, such as companies investing in land. FAO. 2008. “Land Tenure Studies 10: Compulsory acquisition of land and compensation.” Rome, Italy: FAO. Available at: <http://www.fao.org/3/a-i0506e.pdf>

⁹² Palmer, D. et al. 2009. “Land Tenure Working Paper 11: Toward Improved Land Governance.” Rome, Italy: FAO. Available at: <http://www.fao.org/3/a-ak999e.pdf>

Identifying and consulting affected populations would bring states into conformity with Section 16.3 of the VGGTs, which calls for expropriation processes to be transparent and participatory. Based on the information gathered through these consultations and negotiations, compensation may be agreed upon on a case-by-case basis. This would be an effective alternative to requiring that customary tenure holders show titles, certificates, and other legal documents to prove they're entitled to compensation.

As discussed in Section IV of this paper, registration processes in many developing countries are often slow, costly, and ineffective at capturing the full range of legitimate tenure rights attached to land parcels. Showing registered titles and other formal documents may be one option for proving an affected landholder is entitled to compensation, but it should not be the only way. Governments should consider adopting the legal provisions established in the laws of the Philippines, South Sudan, Tanzania, Uganda, and Zambia, which formally recognize community land rights regardless of whether those rights are registered. In these countries, customary tenure rights are automatically recognized through customary occupation and use of the land by the community. As an alternative to registration, states could also adopt Rwanda's compensation provision, which allows for affected persons to claim compensation by submitting written testimony from their neighbors stating that they own the expropriated land.⁹³

2. Provide compensation for IPLC tenure rights regardless of the type of land (i.e. ecosystems). In order to adopt the VGGTs, states must grant compensation for IPLC tenure rights in all common properties, including pastures, wetlands, and other undeveloped commons. As opposed to limiting the legal definition of "community land" to certain types of land (e.g. forest land), compensation procedures should broadly provide compensation for community tenure rights regardless of where those rights are located. In Botswana, Kenya, South Sudan, Rwanda, and other countries, governments claim exclusive ownership over certain land areas (e.g. forests, wetlands) for conservation purposes, such as the establishment of protected areas. The laws in these countries seem to ignore the fact that many of these areas have been customarily held and used by communities for centuries. Laws should not allow governments to evict communities from protected areas without payment of compensation. Furthermore, it has been proven that conservation objectives could be more effectively achieved if communities themselves were granted secure rights to manage and protect forests and other conservation areas.⁹⁴ Instead of classifying certain land areas as

⁹³ Government of Rwanda. 2007. Law No. 18/2007 Relating to Expropriation in the Public: Article 18.

⁹⁴ A recent study by World Resources Institute and Rights and Resources Initiative presents compelling evidence that there is far less deforestation within community forests than outside of these forests. Stevens, C. et al. 2014. Securing Rights, Combating Climate Change. Washington, DC: World Resources Institute and Rights and Resources Initiative.

exclusively state or public land, states should adopt laws that recognize rights to all lands customarily held and used by communities, and require that communities themselves conserve and manage protect areas in order to fulfill international conservation and climate change objectives.

3. Provide compensation to IPLC tenure rights regardless of whether their lands are developed, cultivated, or improved. As discussed above, sections 9 and 18 of the VGGTs call for the valuable of land to reflect spiritual, cultural, and other non-market values. In many parts of Asia and Africa, communities use and depend on undeveloped commons, such as pastures, hunting areas, and ancestral burial grounds. Community tenure rights to these areas should be considered legitimate, even in communal land areas that are not cultivated or developed. Instead of basing eligibility on whether the community developed or improved the land, the determination of whether a particular community should be entitled to compensation should be based on whether that community has customarily occupied, used, or depended on the expropriated land. Compensation should account for non-market values, such as spiritual and cultural values, which can be ascertained through a consultative process involving negotiations with affected communities.

4. Provide compensation for IPLC tenure rights regardless of how long the IPLC has held or used the land. The determination of whether a particular community should be entitled to compensation should be based on whether that community has, in good faith, customarily occupied, used, or depended on the expropriated land. If the community submits a claim to compensation and has legitimately used and depended on the expropriated land for some time, then communities should not also have to they have used the land for at least a minimum period of time. Furthermore, it may be difficult to regulate the enforcement of time requirements given the difficulty in ascertaining when exactly a community began exercising their customary rights to land. For instance, India's Forest Rights Act, 2006 provides that "other traditional forest dwellers" must prove they've resided in and depended on the land for at least three generations prior to December 13, 2005, but the Forest Rights Act and its implementing regulations do not clearly define or specify what constitutes a "generation" or what counts as proof of "depend[ing]" on the land.⁹⁵ An appropriate alternative to establishing a rigid time restrictions would be to obligate governments to survey affected land and consult

Available at: <http://www.rightsandresources.org/publication/securing-rights-combating-climate-change-how-strengthening-community-forest-rights-mitigates-climate-change/>.

⁹⁵ Government of India. 2006. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), Section 2(o).

affected persons in order to ascertain whether tenure rights are legitimate and eligible for compensation

Appendix

Compensation Security Indicator Findings

	Is compensation provided for formally recognized IPLC tenure rights?	Is compensation provided for unregistered IPLC tenure rights?	Is compensation provided for formally recognized IPLC tenure rights regardless of the type of land (i.e. terrestrial ecosystem) held by communities?	Is compensation provided for formally recognized IPLC tenure rights regardless of whether the IPLCs developed or made improvements on the land?	Is compensation provided for formally recognized IPLC tenure rights regardless of how long the community has held or used the land?
Afghanistan ¹ (all communities)	YES	PARTIAL	NO	PARTIAL	NO
Bangladesh ² (all communities)	NO	NO	NO	NO	NO
Botswana ³ (all communities)	YES	NO	NO	YES	YES
Burkina Faso ⁴ (all communities)	YES	PARTIAL	YES	YES	YES

Cambodia ⁵ (indigenous communities)	PARTIAL	NO	NO	NO	PARTIAL
China ⁶ (all communities)	YES	NO	YES	NO	YES
Ethiopia ⁷ (all communities)	YES	NO	NO	NO	YES
Ghana ⁸ (all communities)	YES	NO	YES	YES	YES
Hong Kong ⁹ (all communities)	NO	NO	NO	NO	NO
India ¹⁰ (all communities)	YES	PARTIAL	NO	YES	NO
Indonesia ¹¹ (all communities)	YES	NO	NO	YES	YES
Kazakhstan ¹² (non-indigenous communities)	NO	NO	NO	NO	NO
Kenya ¹³ (all communities)	YES	PARTIAL	NO	YES	YES
Liberia ¹⁴ (all communities)	YES	PARTIAL	NO	YES	YES
Malaysia ¹⁵	YES	NO	NO	YES	YES

(all communities)					
Mongolia ¹⁶ (all communities)	NO	NO	NO	NO	NO
Namibia ¹⁷ (all communities)	YES	NO	NO	NO	YES
Nigeria ¹⁸ (all communities)	YES	NO	NO	NO	YES
Philippines ¹⁹ (indigenous communities)	YES	YES	YES	YES	YES
Rwanda ²⁰ (all communities)	YES	PARTIAL	NO	YES	YES
South Africa ²¹ (all communities)	YES	PARTIAL	YES	YES	PARTIAL
South Sudan ²² (all communities)	YES	YES	NO	YES	YES
Sri Lanka ²³ (all communities)	NO	NO	NO	NO	NO
Taiwan ²⁴ (indigenous communities)	YES	NO	YES	YES	YES
Tanzania ²⁵ (all communities)	YES	YES	YES	PARTIAL	PARTIAL

communities)					
Thailand ²⁶ (all communities)	NO	NO	NO	NO	NO
Uganda ²⁷ (all communities)	YES	YES	NO	YES	YES
Vietnam ²⁸ (all communities)	YES	PARTIAL	YES	YES	YES
Zambia ²⁹ (all communities)	YES	YES	YES	NO	PARTIAL
Zimbabwe ³⁰ (all communities)	YES	NO	NO	PARTIAL	YES

¹ The laws assessed suggest that customary tenure holders are legally entitled to compensation for expropriation in Afghanistan. Article 22(1)-(2) of the Law on Land Expropriation, 2000 indicates that formal documentation is required for receiving compensation. As Alden Wily (2013) points out, “the [Law on Land Expropriation] is silent as to how properties held by people customarily and/or without documents are treated when it comes to compensation.” However, according to Article 7 of Decree No. 83, 2003 “ownership of private property may be proved by [presentation of] valid legal and sharia based documents, provided that the invalidator document does not exist.” The answer to the “registration” indicator is partial because, according to Article 8 of the Land Management Law, 2000, “In the event that the landowner is not in possession of a legally valid document while: (a) With the exception of the 2nd clause of this article, the property under his/her occupation is not registered in Principle Book of Government Lands; (b) Other people do not possess LVD over the same area of land; (c) Signs of construction and agricultural work have been observed on the land; (d) And where the neighbouring landowners have confirmed his occupation of the land for more than 15 years before 6th Jadi 1358* the abovementioned land, up to 10 jiribs of the grade one, shall be deemed to be his property.” Furthermore, article 3 of the Law on Managing Land Affairs, 2008 defines “owner” of land as “Owner: is the person that has manorial captured on his land, based on legal and religious documents.” Article 5 of the Law on Managing Land Affairs, 2008 provides circumstances under which customary documents are considered “trustworthy” and enforceable. Likewise, article 1 of the Law of Land survey, Verification and Registration provides that customary deeds are valid ownership documents. The law establishes a restriction on the types of land to which communities can claim rights; article 3(8) of the Law on Land Management Affairs, 2008 defines government lands as “Plat or plats of garden, watery, non-watery, hills, meadow, robe deplorable, forested,

pasture, fitting deplorable, and many other lands that has registered in the properties' book." The 2005 Amendment to the Law on Land Expropriation provides "Where the State-owned lands being used by State and mixed departments are possessed by the municipality, local chief or other departments, in that case only constructional materials shall belong to the former possessors, and shall not be paid the land and building prices." In terms of whether compensation is limited to improvements, the answer is "partial" because Article 9 of the Law on Land Expropriation provides that "any lands distributed to people...[from 1978 to 1992]...shall be expropriated if needed for public reasons, for the price of the building and the trees, without any compensation for the price of the land". Article 8 of the Land Management Law, 2000 establishes a "time" restriction; landowners must prove they have lived on the land for more than 15 years before 6th Jadi 1358. Government of Afghanistan. 2000. Law on Land Expropriation (Amended 2005). Available at: <http://faolex.fao.org/docs/texts/afg78399.doc> Government of Afghanistan. 2008. Law on Managing Land Affairs. Government of Afghanistan. 2000. Land Management Law. Government of Afghanistan. 2003. Decree of the President No. 83. Government of Afghanistan. 2000. Law and Pasture and Grazing Land. Available at: <http://faolex.fao.org/docs/texts/afg78116.doc>; Government of Afghanistan. 2004. Constitution of Afghanistan. Available at: <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>; LANDac. 2011. Afghanistan Food Security and Land Governance Factsheet. Available at: <http://www.landgovernance.org/system/files/Afghanistan%20Factsheet%20landac%20april%202011.pdf>; World Bank. 2016. Land Governance Assessment National Synthesis Report (Afghanistan); UNAMA. 2014. The Stolen lands of Afghanistan and Its People. Available at: https://unama.unmissions.org/sites/default/files/unama_rol_unit_part_1_legal_framework_final-2.pdf; Alden Wily. 2013. Protecting Peoples' Interests? A Social Analysis of Land Expropriation Law of Afghanistan. Kabul; World Bank.

² The national-level statutory and regulatory frameworks assessed do not explicitly grant communities the right to receive compensation when their land is expropriated. According to the analysis of national laws conducted on LandMark, the national statutory and regulatory frameworks in Bangladesh do not recognize the tenure rights held by indigenous and local communities. Government of Bangladesh. 1972. Constitution of Bangladesh (Amended 2011). Available at: https://www.constituteproject.org/constitution/Bangladesh_2011.pdf; Government of Bangladesh. 1982. The Acquisition and Requisition of Immovable Property Ordinance. Available at: <http://faolex.fao.org/docs/texts/bgd35873.doc>; Alden Wily et al. 2016(c); U.S. Agency for International Development (USAID). Property Rights and Resource Governance Profile: Bangladesh. Available at: <http://www.land-links.org/country-profile/bangladesh/>

³ Sec. 33(2) of the Chapter 32:02, Tribal Land Act, 1968 (amended 2008) recognizes community rights to receive compensation. Section 16 of the Tribal Land Act indicates that registration of community land in Botswana is compulsory. National Parks and most Wildlife reserves are state property under the Wildlife Conservation and National Parks Act (CAP 38:01), 1992. Section 16 of the Acquisition of Property Act CAP 32:10 indicates that compensation is not limited to developed land since affected persons can claim compensation for any damages sustained as a result of acquisitions. The laws assessed do not establish time requirements for receiving compensation. Government of Botswana. Constitution of Botswana. Available at: http://www.chr.up.ac.za/undp/domestic/docs/c_Botswana.pdf; Government of Botswana. 1955. Acquisition of Property Act Chapter 32:10. Available at: <http://faolex.fao.org/docs/pdf/bot91353.pdf>; Government of Botswana. 1968. Tribal Land Act Chapter 32:02 (Amended 2008). Available at: <http://faolex.fao.org/docs/pdf/bot39051.pdf>; Government of Botswana. 1970. Tribal Land Regulations. Available at: <http://faolex.fao.org/docs/pdf/bot26411.pdf>; Government of Botswana. 1987. Chieftainship Act Chapter 41:01. Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84990/94900/>; Government of Botswana. 1992. Wildlife Conservation and National Parks Act (CAP 38:01). Available at: <http://faolex.fao.org/docs/pdf/bot4728.pdf>; Alden Wily et al. 2016(c).

⁴ Burkina Faso's laws recognize registered and unregistered customary rights as legitimate rights of possession, and these rights are granted the same level of legal protection as non-customary rights (secs. 2, 4, 6, 7, 13, Law No. 034-2009/AN On Rural Land Tenure). However, it is unclear whether unregistered community rights are granted the same level of compensation at compulsory acquisition (Arts. 30, 194, and 196, Law No. 034-2012; see LandMark legal indicator analysis). The laws assessed do not establish limits on the types of lands to which communities can obtain formally recognized rights. Communities may establish and manage own protected areas and access national forests under the Loi no. 006/97/ADP portant Code forestier au Burkina Faso. Compensation is not limited to developed land. Article 323 of Law No. 34/2012 (the Agrarian Reform law) provides "the compensation for expropriation should only cover the current injury and some directly caused by the expropriation. It cannot extend to an uncertain damage, potential or indirect" (unofficial translation). The laws assessed do not establish time requirements for receiving compensation. Government of Burkina Faso. 1991. Constitution of Burkina Faso (Amended 2012). Available at: https://www.constituteproject.org/constitution/Burkina_Faso_2012.pdf?lang=en; Government of Burkina Faso. Law 034-2012/AN Agrarian Reform Law. Available at: <http://faolex.fao.org/docs/pdf/bkf139639.pdf>; Government of Burkina Faso. 2009. Law 034-2009/AN on Rural Land Tenure. Available at: <http://faolex.fao.org/docs/texts/bkf95496.doc>; Government of Burkina Faso. Loi no. 006/97/ADP portant Code forestier au Burkina Faso. Government of Burkina Faso. 2007. National Rural Land Security Policy. Available at: <http://faolex.fao.org/docs/texts/bkf85683.doc>; Alden Wily et al. 2016(c).

⁵ When read together, articles 16 and 22 of the Law on Expropriation indicate that compensation is limited to rightful "owners." Article 24-26 of the Land Law (2001) provide ownership rights to indigenous communities for cultivated and shifting cultivated lands, but not for other types of land held by communities (e.g. uncultivated areas). Furthermore, article 15 of the Land Law, 2001 classifies "any property that has a natural origin, such as forests, courses of navigable or floatable water, natural lakes, banks of navigable and floatable rivers and seashores" as "public property" of the state. The Sub Decree on Procedures of Registration of Land and Indigenous Communities (2009) requires communities to register their lands in order to receive recognition and compensation upon expropriation. It can be inferred that compensation is limited to cultivated community land (or areas of shifting cultivation) since Article 25 of Land Law (2001) provides that "the lands of indigenous communities include not only lands actually cultivated but also includes reserved areas necessary for the shifting of cultivation which is required by the agricultural methods they currently practice and which are recognized by administrative authorities." The laws assessed do not establish time requirements for receiving compensation. Since non-indigenous communities are only granted traditional user rights to forests, and the Law on Expropriation limits compensation to owners, non-indigenous communities are not granted the right to compensation for expropriation of their lands. Government of Cambodia. 1993. Constitution of Cambodia. Available at: http://cambodia.ohchr.org/klc_pages/KLC_files/section_001/section_01_01_ENG.pdf; Government of Cambodia. 2010. Law on Expropriation. Available at: [http://portal.mrcmekong.org/assets/documents/Cambodian-Law/-Law-on-Expropriation-\(2010\).pdf](http://portal.mrcmekong.org/assets/documents/Cambodian-Law/-Law-on-Expropriation-(2010).pdf); Government of Cambodia. 2001. Land Law of 2001. Available at: <http://faolex.fao.org/docs/texts/cam27478.doc>; Government of Cambodia. 2009. Sub Decree on Procedures of Registration of Land of Indigenous Communities of 2009. Available at: [http://www.opendevdevelopmentcambodia.net/download/law/2009_Sub_Degree_on_Registration_of_Indigenous_Community_Land_\(E\).pdf](http://www.opendevdevelopmentcambodia.net/download/law/2009_Sub_Degree_on_Registration_of_Indigenous_Community_Land_(E).pdf). Alden Wily et al. 2016(b).

⁶ Article 42 of the Property Rights Law, 2007 provides the right to compensation for the expropriation of collectively-owned land. Article 9 of the 2007 Property Rights Law states that "unless otherwise provided by law, the establishment, modification, transfer and lapse of the right in real property shall only take effect upon registration pursuant to laws." Article 58 of the 2007 Property Rights Law broadly defines collectively owned property as "lands, forests, mountains, grasslands, unclaimed land and beaches owned collectively." Article 47 of the Law on Land Administration indicates that compensation may only be payable for cultivated land, suggesting that communities that hold and depend on uncultivated areas may not be granted compensation. Both Article 47 of the Law on Land Administration and Article 42 of the Property Rights Law indicate that compensation is only payable for crops and improvements (e.g. fixtures). The laws assessed do not establish time requirements for receiving compensation. Government of China. 2004. Constitution of China. Available at: http://www.constituteproject.org/constitution/China_2004.pdf?lang=en; Government of China. 1998. The Law of Land Administration of the People's Republic of China. Available at:

<http://www.china.org.cn/english/environment/34345.htm>; Government of China. 2007. Property Rights Law of the People's Republic of China. Available at: http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471118.htm; Government of China. 2011. Regulation on the Expropriation of Buildings on State-owned Land and Compensation. Available at: <http://landwise.resourceequity.org/record/270>. Alden Wily et al. 2016(c).

⁷ When read together, articles 1470 and 1489 of Ethiopia's Civil Code indicate that communities with customary tenure have a right to compensation when their lands are expropriated. In order to obtain compensation, communities must show a "holding certificate" which is defined as a certificate of title issued by a competent authority as proof of rural land use right. (Section 2(14), Section 6(1)), Rural Land Administration and Land Use Proclamation (RLAALUP) (2005)). Under the RLAALUP, "communal holding" is defined as rural land which is given by the government to local residents for common grazing, forestry and other social services (Sec. 2(12), RLAALUP). However, it is unclear that compensation can be provided for land used for non-grazing and non-agricultural purposes. Section 7(3) of the RLAALUP provides that the "holder of rural land who is evicted for purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquired, or shall be given substitute land thereon". The laws assessed do not establish time requirements for receiving compensation. Government of Ethiopia. 1994. Constitution of Ethiopia. Available at: http://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html; Government of Ethiopia. 2005. Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation. Available at: <http://faolex.fao.org/docs/pdf/eth135247.pdf>; Government of Ethiopia. 1960. Civil Code of Ethiopia. Available at: [https://www1.umn.edu/humanrts/research/Civil%20Code%20\(English\).pdf](https://www1.umn.edu/humanrts/research/Civil%20Code%20(English).pdf); Government of Ethiopia. 1975. Public Ownership of Rural Lands Proclamation No. 31/1975. Available at: <http://faolex.fao.org/docs/pdf/eth3096.pdf>. Government of Ethiopia. 2005. Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No. 456/2005. Available at: <http://faolex.fao.org/docs/pdf/eth95459.pdf>.

⁸ When read together, articles 20(2) and Article 267 of the Constitution of Ghana indicate that communities have a right to compensation for the expropriation of their lands. However, registration is compulsory under section 110 of the title Registration Act 1986. Section 4(1) of the State Lands Act, 1962 indicates that compensation is not limited to developed land. The laws assessed do not establish restrictions on the types of common properties communities for which communities can claim compensation: Article 257 of Constitution, which defines state lands, does not explicitly exclude certain types of ecosystems from customary ownership or management. Furthermore, section 17 of the Forestry Act, 1927 provides that the ownership of land within a forest reserve shall not be altered by its constitution of a forest reserve, indicating that communities can own land in forest reserves. The laws assessed do not establish time requirements for receiving compensation. Government of Ghana. 1992. Constitution of Ghana. Available at: http://www.judicial.gov.gh/constitution/chapter/chap_1.htm; Government of Ghana. 1962. State Lands Act. Available at: <http://faolex.fao.org/docs/pdf/gha3105.pdf>; Government of Ghana. 1962. Administration of Lands Act, 1962. Available at: <http://faolex.fao.org/docs/pdf/gha3115.pdf>; Government of Ghana. 1962. State Lands Regulations. Available at: <http://faolex.fao.org/docs/pdf/gha3107.pdf>; Government of Ghana. 1986. Title Registration Act. Available at: <http://faolex.fao.org/docs/pdf/gha6287.pdf>; Government of Ghana. 1927. Forestry Act. Available at: <http://www.clientearth.org/external-resources/ghana/forests-and-wildlife/1927%20FORESTS%20ACT.pdf>

⁹ The Land Resumption Ordinance, 1998 provides compensation for registered property owners; however, Hong Kong's national laws do not provide a clear process by which Indigenous inhabitants can obtain formally recognized ownership rights to their land. Hong Kong's Basic Law, 1990 vaguely recognizes the "traditional rights and interests" of Indigenous inhabitants in the Northern Territory, but there is no clear Indigenous ownership right to land recognized by law. Government of Hong Kong. 1990. Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Government of Hong Kong. 1998. Land Resumption Ordinance, Section 2 and 8. Government of Hong Kong. 1990. Constitution of Hong Kong. 1990. Available at: http://www.servat.unibe.ch/icl/hk00000_.html; Government of Hong Kong. 1998. Land Resumption Ordinance (CAP. 124). Available at: [http://www.legislation.gov.hk/blis_pdf.nsf/4f0db701c6c25d4a4825755c00352e35/28F18E70FD9CAA25482575EE03F5A41/\\$FILE/CAP_124_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/4f0db701c6c25d4a4825755c00352e35/28F18E70FD9CAA25482575EE03F5A41/$FILE/CAP_124_e_b5.pdf); Alden Wily et al. 2016(c).

¹⁰ Section 3 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act (LARR Act) 2013 includes within the definitions of "affected families", "land owners", and "persons interested" landholders granted forest rights under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA). The FRA 2006 defines "forest rights" as "any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers" (Sec. 3(1)(l), FRA, 2006). Customary forest rights must register to achieve legal recognition under the FRA 2006 (Sec. 6, Forest Rights Act, 2006). However, the score on the "registration" indicator is partial because the LARR Act suggests that some "affected families" may receive compensation even if their rights are not formally registered: Section 3(c)(iv) of the defines "affected family" as "family whose source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to the acquisition." The LARR Act 2013 and the FRA 2006 do not require that expropriated land must be developed in order for the forest communities to receive compensation (Secs. 25-30, LARR Act). The LARR Act 2013 and the FRA 2006 establish time requirements which must be satisfied to obtain compensation. Sections 3(iii) and 3(iv) of the LARR Act 2013 define "affected family" provide compensation for Scheduled Tribes and other traditional forest dwellers and families whose primary source of livelihood for three years prior to the acquisition of land is dependent on forests or water bodies. Additionally, Section 2(o) of the FRA 2006 provides that "other traditional forest dweller" means "any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forest lands for bona fide livelihood needs." Government of India. 2007. Constitution of India. Available at: <https://india.gov.in/my-government/constitution-india/constitution-india-full-text>; Government of India. 2013. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act. Available at: <http://indiacode.nic.in/acts-in-pdf/302013.pdf>; Government of India. 2006. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. Available at: <http://angul.nic.in/tribal-act.pdf/>; Alden Wily et al. 2016(c).

¹¹ Article 40 of Law No. 2 of 2012 grants compensation to indigenous communities and other land tenure holders. Article 40 of Law No. 2 of 2012 defines "land tenure holders" as "parties holding means of proof issued by the competent official documenting the existence of the relevant land tenure, for example, the holders of deed of sale and purchase of unretitled land, the holders of deed of sale and purchase of uncertified customary titles/rights, and the holders of dwelling permits." In other words, the law implies that registration/formal documentation is required for communities to receiving compensation when their lands are expropriated. The Constitutional Court held that, under the 1999 Forest Law, customary forests must be included as a category of "titled forests" and thus granted the same level of protection as other titled forests. (Para. 3.13.3, 3.13. 6, Constitutional Court Decision "PUTUSAN – Nomor 35/PUU-X/2012"). The Constitutional Court's ruling suggests that compensation may be limited to community forest lands, and not granted for other types of common properties. Article 33 of Law No. 2/2012 does not establish a requirement that the land must be developed to receive compensation. Furthermore, the laws assessed do not establish time requirements for receiving compensation. Government of Indonesia. 1945. Constitution of Indonesia; Government of Indonesia. Acquisition of Land for Development in the Public Interest (Law No. 2 of 2012). Available at: <http://faolex.fao.org/docs/pdf/ins142768.pdf>; Government of Indonesia. 1999. Act. 41 of 1999 on Forestry Affairs. Available at: <http://faolex.fao.org/docs/pdf/ins36649.pdf>; Government of Indonesia. 1960. Basic Agrarian Act. Available at: <http://faolex.fao.org/docs/pdf/ins3920.pdf>; Government of Indonesia. 2012. Constitutional Court Decision, PUTUSAN – Nomor 35/ PUU-X/2012. Available at: http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_35%20PUU%202012-Kehutanan-telah%20ucap%2016%20Mei%202013.pdf; Presidential Decree No. 71/2012; Alden Wily et al. 2016(c).

¹² The national-level statutory and regulatory frameworks assessed do not explicitly grant communities with customary tenure the right to receive compensation when their land is expropriated. In practice, community pastoralists sometimes manage municipal lands, but communities are not granted explicit legal rights to pasture lands. Government of Kazakhstan. 1995. Constitution of Kazakhstan. Available at: <http://www.parlam.kz/en/constitution>; Government of Kazakhstan. 2003. Land Code of the Republic of Kazakhstan. Available at: <http://faolex.fao.org/docs/texts/kaz43145.doc>; Government of Kazakhstan. 2011. Law on State-Owned Property (No. 413-IV ZRK). Available at: <http://cis-legislation.com/document.fwx?rgn=32885>; Government of Kazakhstan. 1994. Civil Code. Available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=200699; RRI(2015); Alden Wily et al. 2016(c).

¹³ Section 5 of the 2012 Land Act recognizes interests in land held by customary landholders. Section 111 of said Land Act provides that just compensation shall be paid promptly in full to all persons with interests in land. Section 5(3) of the National Land Commission Act, 2012 states “...the Commission shall ensure that all unregistered land is registered within ten years from the commencement of this Act.” Section 63(3) of the Constitution provides “any unregistered community land shall be held in trust by county governments on behalf of the communities.” Section 6(2)-(3) of the Community Land Act, 2016 requires that communities register in order to obtain compensation, but states that “the respective county governments shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any registered land..[And] upon registration of community land, the respective county governments shall promptly release the community all such monies payable for compulsory acquisition.” In terms of whether there are restrictions on the types of lands for which communities can obtain formally recognized tenure, the definition of “public land” under Article 62 of the Constitution indicates that certain land areas (e.g. forest reserves, national parks) are state property and therefore presumably may not be classified as community land. Article 63(2) of the Constitution of Kenya provides “(2) Community land consists of—(a) land lawfully registered in the name of group representatives under the provisions of any law; (b) land lawfully transferred to a specific community by any process of law; (c) any other land declared to be community land by an Act of Parliament; and (d) land that is— (i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or (iii) lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62 (2). (3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.” The 2005 Forest Act only recognizes customary use rights to forests, but does not provide compensation rights for communities. The Land Commission is charged with establishing rules for regulating the assessment of compensation” (Sec. 111(2) and 113(1)(2), Land Act, 2012). The laws assessed do not establish time requirements for receiving compensation. Government of Kenya. 2010. Constitution of Kenya. Available at: <https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>; Government of Kenya. 2012. Land Act. Available at: <http://faolex.fao.org/docs/pdf/ken112131.pdf>; Government of Kenya. 2010. Land Acquisition Act (Repealed by Land Act 2012). Available at:

<http://faolex.fao.org/docs/pdf/ken18461.pdf>; Government of Kenya. 2012. National Land Commission Act (No. 5 of 2012). Available at: <http://faolex.fao.org/>

<docs/pdf/ken112132.pdf>; Government of Kenya. 2005. Forest Act. Government of Kenya. 2016. Community Land Act. Available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf; Alden Wily et al. 2016(c); Alden Wily. 2016(d).

¹⁴ Article 24 of the Constitution grants compensation to any affected landowner when their land is expropriated. Section 1.3 of the Community Rights Law 2009 defines “customary land” as “land, including forest land, owned by the community individuals, groups, families or communities through longstanding rules recognized by the community. To be recognized as customary land, it is not necessary for the land to have been registered under statutory entitlements.” Regarding whether registration is required for receiving compensation, the answer is “partial” because it is not clear that communities have informal rights to non-forest land--the Community Rights Law 2009 only explicitly grants rights to forest land.(Sec. 2.3, Community Rights Law). The laws assessed do not establish development requirements or time requirements for receiving compensation. While Encroaching on Land and Livelihoods did not account for rights to compensation, which are implicitly established under the Community Rights Law and Constitution of Liberia, Liberia’s laws were reinterpreted to account for these rights in this paper. Government of Liberia. 1984. Constitution of Liberia. Available at: <http://www.liberianlegal.com/constitution1986.htm>; Government of Liberia. 2009. An Act to Establish the Community Rights Law of 2009 with Respect to Forest Lands. Government of Liberia. Draft Land Rights Act 2013 (pending). Available at: http://www.sdiliberia.org/sites/default/files/publications/Land%20Rights%20Act_full%20draft.pdf; Alden Wily et al. 2016(c); Tagliarino, N. 2016.

¹⁵ The Land Acquisition Act, 1960 defines “land” as “means alienated land within the meaning of the State

land law, land occupied under customary right and land occupied in expectation of title.” The First Schedule of the Act provides that “in assessing the market value of any scheduled land which is Malay reservation land under any written law relating to Malay reservations, or a Malay holding under the Malay Reservations Enactment of Terengganu [Terengganu En. No. 17 of 1360 (A.H)], or customary land in the State of Negeri Sembilan or the State of Malacca, the fact that it is such Malay reservation land, a Malay holding, or customary land shall not be taken into account except where the scheduled land is to be devoted, after the acquisition, solely to a purpose for the benefit of persons who are eligible to hold the land under such written law.” This provision in the First Schedule indicates that there may be restrictions on the types of lands to which community rights are granted. However, the Land Acquisition Act, 1960 does not establish a development requirement or time requirement. Government of Malaysia. 1974. Federal Constitution. Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/my/my063en.pdf>; Government of Malaysia. 1960. Land Acquisition Act (Amended 1992). Available at: <http://faolex.fao.org/docs/pdf/mal33384.pdf>; Government of Malaysia. 2008. National Land Code 1965 (Amended 2008). Available at: <http://faolex.fao.org/docs/texts/mal91850.doc>; Government of Malaysia. 1956. Land Development Act, 1956. Available at: <http://faolex.fao.org/docs/pdf/mal33393.pdf>; Alden Wily et al. 2016(c).

¹⁶ The national-level statutory and regulatory frameworks assessed do not explicitly grant communities the right to receive compensation when their land is expropriated. According to Article 54 of the Law on Land, 2002, the government provides communities with collective use rights to summer and autumn settlements and rangelands; however, the state retains ownership of these areas. Article 30.1.8 of the Law on Allocation of Land, 2002 provides that “owners” are entitled to compensation, but not other tenure rights holders. Government of Mongolia. 1992. Constitution of Mongolia. Available at: <http://www.servat.unibe.ch/icl/mg00000.html>; Government of Mongolia. 2002. Law on Allocation of Land to Mongolian Citizens for Ownership. Available at: <http://faolex.fao.org/docs/pdf/mon42187.pdf>; Government of Mongolia. 2002. Law on Land. Available at: <http://faolex.fao.org/docs/texts/mon62064.doc>; Alden Wily et al. 2016(c).

¹⁷ Article 40 of the Communal Land Reform Act (CLRA) recognizes a right of customary tenure holders to obtain compensation for expropriation. Section 25(5)(c) of the Agricultural (Commercial) Land Reform Act 6 of 1995 provides that “no allowance shall be made for any unregistered right in respect of any other property or for any indirect damage or anything done with the object of obtaining compensation therefor...There are limitations on the types of lands to which communities can claim rights. The CLRA makes no provision for off-farm commonage as common property other than through leaseholds for commercial ranching & tourism enterprises. Section 15, 16, 21 and 23 of the CLRA sets limitations on the extent of communal land. Section 25 of the CLRA “if a board ratifies the allocation of customary land right...it must- (a) cause such right to be registered in the prescribed register in the name of the person to whom it was allocated; and (b) issue to that person a certificate of registration in the prescribed form and manner.” Section 21 of the CLRA only provides the following types of rights to communal land “(a) a right to a farming unit; a right to a residential unit; (c) a right to any other form of customary tenure provides that may be recognized and described by the Minister...” Section 23 of said Act grants the Minister broad discretion to set limitations on the size of land that may be held under customary land rights. Section 40 and 42 of the CLRA indicate that compensation for extinguished rights may only be based on the improvements made on the land. The laws assessed do not establish “time” restrictions on community tenure rights; section 26 of the CLRA provides “a customary land right allocated under this Act endures for the natural life of the person to whom it is allocated” and then the right reverts to the Chief, surviving spouse, or children of the community member. Government of Namibia. 1990. Constitution of the Republic of Namibia. Available at: http://www.icla.up.ac.za/images/constitutions/namibia_constitution.pdf; Government of Namibia. Communal Land Reform Act 2002 (Amended 2013). Available at: <http://faolex.fao.org/docs/pdf/nam137197.pdf>; Government of Namibia. Agricultural (Commercial) Land Reform Act 6 of 1995 (Amended 2013). Available at: <http://faolex.fao.org/docs/pdf/nam137198.pdf>; Alden Wily et al. 2016(c).

¹⁸ Compensation is payable to communities, but only to those communities that are residing in certain areas limited to certain areas, such as areas used for agriculture and grazing purpose (sections 5 (1) (a), 5 (2), 6 (2), 51, Land Use Act (LUA), CAP 202, 1978). Section 6(5) of the LUA provides that “the holder and the occupier according to their respective interests of any customary right of occupancy revoked under sub-section (2), shall be entitled to compensation for the value at the date of the revocation of their unexhausted improvements.” Sub-section 6(2) states “No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the

Governor." Customary rights are only recognized if granted by the Local Government under Section 6 of the LUA (see also Sec. 6 of the LUA). Compensation is payable only for unexhausted improvements (Secs. 6(5), 29(1), 29(4), LUA). The LUA does not establish any time requirements, which must be fulfilled by communities in order to receive compensation. Government of Nigeria. 1999. Constitution of Nigeria. Available at:

http://www.worldstatesmen.org/nigeria_const1960.pdf; Government of Nigeria. 1978. Land Use Act CAP 202. Available at: <http://www.nigeria-law.org/Land%20Use%20Act.htm>; Alden Wily et al. 2016(c).

¹⁹ Section 7(b) of Indigenous People's Rights Act 1997 (IPRA) provides Indigenous Peoples (IPs) with the right to receive just and fair compensation for any damages which they may sustain as a result of development projects. Section 71 of the IPRA establishes the Ancestral Domains Fund to cover compensation for expropriated lands. Sections 7 and 11 of the IPRA 1997 suggest that registering indigenous community land is voluntary but not necessarily required to receive compensation for expropriation. Section 11 of the IPRA provides "the rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated." The legal definition of "Ancestral Domains" does not establish limits on the types of commons IPs can own. Section 3(a) of IPRA 1997 provides "Ancestral Domains ...refers to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present...It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators." The Comprehensive Agrarian Reform Law of 1988 provides that "ancestral lands of each indigenous cultural community shall include, but not be limited to, lands in the actual, continuous and open possession and occupation of the community." The laws assessed do not establish development (improvement) requirements or time requirements for receiving compensation. According to LandMark, national laws only apply to indigenous communities and not non-indigenous communities. Government of Philippines. 1987. Constitution of Philippines. Available at: <http://www.gov.ph/constitutions/1987-constitution/>; Government of Philippines. 1997. The Indigenous Peoples' Rights Act of 1997. Available at: <http://www.gov.ph/1997/10/29/republic-act-no-8371/>; Government of the Philippines. 1988. Comprehensive Agrarian Reform Law of 1988 (Republic Act No. 6577). Available at: <http://faolex.fao.org/docs/html/phi3886.htm>; Alden Wily et al. 2016(c).

²⁰ When read together, Articles 5 and 7 of the 2005 Organic Law and Article 2(7) of Law No. 18/2007 Relating to Expropriation in the Public Interest indicate that communities with customary tenure rights have a right to compensation when their lands are expropriated. Article 30 of the Organic Law, 2005 indicates that registration is obligatory. However, there are alternative ways of proving ownership rights for purposes of obtaining compensation. Article 18 of the Expropriation Law, 2007 states "the person who owns land intended for public interest shall provide evidence to confirm that he or she possesses rights on that land and presents a certificate of acknowledgement of the members of his or her family. Among the evidence to confirm ownership of the land, there shall be included: (1) written evidence indicating that he or she purchased the land, received it as a donation or as a legacy or a successor; (2) a document or a statement of local administrative entities indicating rights of the expropriated person on the land; (3) a document or testimony of the neighbors confirming the ownership of the land; (4) a Court certificate." Thus, in some cases, registration is not required to receive compensation, since an affected person can alternatively seek testimony from his or neighbors. The law strips communities of rights to traditional forests and wetlands (these commons are declared as State property) (Article 2(19), 12(4), 29, 75, 2005 Organic Law). The laws assessed do not development (improvement) requirements or time requirements for receiving compensation. Government of Rwanda. 2003. Constitution of Rwanda. Available at: <http://www.rwandahope.com/constitution.pdf>; Government of Rwanda. 2007. Law No. 18/2007 Relating to Expropriation in the Public Interest (Amended 2015). Available at: <http://faolex.fao.org/docs/pdf/rwa74723.pdf>; Government of Rwanda. 2005. Organic Law No. 08/2005 Determining the Use and Management of Land in Rwanda. Available at: http://www.lexadin.nl/wlg/legis/nofr/oeur/arch/rwa/ORGANIC_LAW_N.doc; Alden Wily et al. 2016(c).

²¹ When read together, section 9 of the Expropriation Act, 1975 and section 2 of the Communal Property Associations Act, 1996, and the Interim Protection Informal Land Rights Act (IPLRA) (1996) indicate that indigenous and local communities are entitled to compensation upon expropriation. Customary land is vested in the State or in the Ingonyama Trust in KwaZulu Natal. Nevertheless, community tenure rights are protected as if property. Also, according to the World Bank's Land Governance Assessment Framework (LGAF) Synthesis Report on South Africa found "a person (or community) who holds an informal right to land as defined in the Interim Protection of Informal Land Rights Act (IPLRA) (1996) may not be deprived of that right save with his or her consent or by expropriation if required in the public interest or for a public purpose (in which case compensation is payable)" (sec. 2, IPLRA). The IPLRA provides for tribal, customary, indigenous lands in rural areas and informal settlements to be protected as property (enforceable against the owners, the state) until registered but explicitly excludes tenants on registered properties (Sec. 1(1), IPLRA). Also, the World Bank's LGAF study found that certain unregistered property rights, such as grazing rights, are not usually compensated. Sec. 2 of the IPLRA does not establish limitations on the types of community lands for which compensation may be paid or development (improvement) requirements. Furthermore, the National Forest Act 1998 allows for communities to claim ownership to forest land outside of protected areas and requires community consent if the government decides to create a protected area on any land held by State or Trusts on behalf of communities (section 2(1), 8). The law establishes a time requirement: section 1(1)(c) of the IPLRA indicates that one way to obtain a recognized right to land under the IPLRA is show "beneficial occupation of land for a continuous period of not less than five years prior to 31 December 1997." Since the Act provides (under Section 2) that compensation shall be paid when informal land rights are deprived, it can be implied that there are some time limits on who is eligible for compensation. Government of South Africa. 1996. Constitution of South Africa. Available at: <http://www.gov.za/documents/constitution-republic-south-africa-1996>; Government of South Africa. 1975. Expropriation Act (amended 2016). Available at: <http://faolex.fao.org/docs/pdf/saf123400.pdf>; Government of South Africa. 1996. Interim Protection of Informal Land Rights Act 31 of 1996. Available at: [http://www.ruraldevelopment.gov.za/phocadownload/Acts/interim protection of informal land rights act 31 of 1996.pdf](http://www.ruraldevelopment.gov.za/phocadownload/Acts/interim%20protection%20of%20informal%20land%20rights%20act%2031%20of%201996.pdf); Government of South Africa. 1996. Communal Property Associations Act, No. 28 of 1997. Available at: <http://www.justice.gov.za/lcc/docs/1996-028.pdf>; Government of South Africa. 1998. National Forest Act. Available at: https://www.unodc.org/res/cld/document/national-forest-act-84-of-1998.html/NATIONAL_FORESTS_ACT.pdf; World Bank. 2016. Land Governance Assessment Framework Synthesis Report of South Africa; Alden Wily et al. 2016(c).

²² Section 75(3) of 2009 Land Act provides that "where any land is expropriated for public purpose and it is necessary to remove any person therefrom in customary occupation, compensation shall be paid as may be agreed upon." Section 64 of the Land Act states that "any community or persons affected by such activities in the area of investment shall be compensated..." Section 11(2) defines "community land" as "(a) land lawfully registered in the name of group representatives under; (b) land lawfully held, managed or used by specific community as section 57 of this Act or any other law for the time being in force; community forests, cultivation, grazing areas, shrines and any other (c) land lawfully transferred to a specific community by any process of law; (d) any other land declared to be community land by law." Section 39(3) of the 2009 Land Act provides "Right of ownership and derivative rights to land may be proven by any other practices recognized by communities in Southern Sudan in conformity to equity, ethics and public order." In terms of whether there is a restriction on the types of land, Section 10(2) of the Land Act indicates that communities within wetlands and forest areas designated as protected areas may not be entitled to compensation, since these areas are classified as "public land." Article 10(2)(c) of the Land Act defines "public land" as land "in respect of which no private ownership including customary ownership may be established by any legal process." Since communities cannot obtain formal rights to public land, they may not be compensated in the case of expropriation. The laws assessed do not development (improvement) requirements or time requirements for receiving compensation. Government of South Sudan. 2011. Transitional Constitution. Available at:

<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/90704/116697/F762589088/SSD90704%202011C.pdf>;
Government of South Sudan. 2009. Land Act. Available at:
http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/South_Sudan/files/HLP%20AoR/South_Sudan_Land_Act_2009_EN.pdf; Alden Wily et al. 2016(c).

²³ The national-level statutory and regulatory frameworks assessed do not explicitly grant communities the right to receive compensation when their land is expropriated. According to the legal analysis conducted for LandMark, Sri Lanka's national and regulatory frameworks do not provide for recognition of community land rights. Government of Sri Lanka. 1978. Constitution of Sri Lanka. Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/lk/lk007en.pdf>; Government of Sri Lanka. 1950. Land Acquisition Act CAP. 295 (Amended 1994). Available at: <http://faolex.fao.org/docs/pdf/srl13617.pdf>. Government of Sri Lanka. 2009. Land Acquisition Regulations. Available at: <http://faolex.fao.org/docs/pdf/srl134058.pdf>; Alden Wily et al. 2016(c).

²⁴ Article 32 of the Indigenous Peoples Basic Law, 2005 provides "In cases of displacement or relocation of Indigenous Persons, the same shall be properly accommodated and compensated for the losses suffered as a result of forced displacement or relocation..." Article 2 of Indigenous Peoples Basic Law defines the "Indigenous Persons" as "nationals who are registered either as Mountain Region Indigenous Peoples or as Plain Region Indigenous Peoples, and thereby obtain legal Indigenous status, being evidenced by the household registration records of aforesaid Indigenous Persons. Article 2 defines "Indigenous Peoples' Regions" as "areas recognized and approved by the Executive Yuan based on the official representation and application made by the Central Indigenous Authority who identifies "Indigenous Peoples' Regions" as all areas within which Indigenous Peoples traditionally live and are duly recognized and officially defined by the Central Competent Authorities as Indigenous Peoples' geographically distinct Traditional Territories, Ancestral Domains, and/or Ancestral Lands which remain traditionally, culturally and historically distinct, hence, characteristically and intrinsically connected to the Indigenous ways of being, living, and relating." While the 1930 Land Act provides compensation for improvements (Article 242), but the broad definition of "Indigenous Peoples' Regions" in the Indigenous Peoples Basic Law, 2005 indicates that compensation may be provided for undeveloped land. Furthermore, Article 246 indicates that compensation may be paid for graves and other commemorative objects. The laws assessed do not establish time requirements for receiving compensation. The national laws only apply to indigenous communities, but not non-indigenous communities. Government of Taiwan. 1947. Constitution of Taiwan (Amended 2000). Available at: <http://www.taiwandocuments.org/constitution01.htm>. Government of Taiwan. 1930. The Land Act (Amended 2006). Available at <https://www.land.moi.gov.tw/onlinebill/505-n.doc>. Government of Taiwan. 2005. Indigenous Peoples Basic Law. Available at: <http://www.apc.gov.tw/portal/docDetail.html?CID=74DD1F415708044A&DID=3E651750B4006467D4B40DD3AC1D7378>.

²⁵ The Land Act, 1999 stipulates that one of its objectives is to ensure that all persons exercising powers under this Act will "pay full, fair and prompt compensation to any person whose right of occupancy or recognized long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act" (Sec. 1(9), 22(1)), Land Act, 1999). Section 8 of the Village Land Regulations, 2001 provides "any villager occupying transferred land or hazard land under customary right of occupancy whether that customary right of occupancy is registered or not..." According to Alden Wily, another effect of the customary right of occupancy "is that if the Government wants to take land belonging to a villager or the village as a whole, it must pay the same levels of compensation for the land it would have to pay if the land were under a Granted Right of Occupancy or the person had a title deed. It is no longer legal for the Government to reimburse the farmer just for the value of the crops or buildings" (Village Land Regulations, Sec. 8-25). However, there is a partial restriction on the right to obtain compensation for undeveloped land: Section 12 of the Land Acquisition Act, 1967 states "no compensation shall be awarded in respect of any land which is vacant ground. (2) Where the development of any land acquired under this Act is inadequate whether such and is in an urban area or in a rural area, any compensation shall be limited to the value of the unexhausted improvements." Agricultural and pastoral lands are not considered vacant but must be in "good estate management" to be eligible for compensation (section 12(5)(b), Land Acquisition Act, 1967). The laws assessed do not establish restrictions on the types of land to which communities may be entitled to expropriation. Section 6 of the Land Act (1999) establishes that certain land areas are categorized as "reserve land"; however, communities can claim compensation when their land is designated as reserve land. According to Liz Alden Wily's LandMark legal indicator assessment, "national parks, game reserves, wetland reserves involve extinction of customary rights with compensation." There is a "partial" time requirement because "where land is used for cultivation or pasturage or mixed cultivation of pasturage, claimant must prove he or she was using the land for at least 12 months" (Section 12(4), Land Acquisition Act, 1967). 1977. Constitution of Tanzania. Available at: <http://www.judiciary.go.tz/downloads/constitution.pdf>; Government of Tanzania. 1967. Land Acquisition Act (Act

No. 47 of 1967). Available at: <http://faolex.fao.org/docs/pdf/tan8958.pdf>; Government of Tanzania. 1999. The Land Act. Available at: <http://faolex.fao.org/docs/pdf/tan23795.pdf>; Government of Tanzania. 1999. Village Land Act. Available at: <http://faolex.fao.org/docs/pdf/tan53306.pdf>; Government of Tanzania. 2001. The Land (Assessment of the Value of Land for Compensation) Regulations. Available at: <http://faolex.fao.org/docs/pdf/tan28341.pdf>; Government of Tanzania. 2002. Village Land Regulations (L.N. No. 86 of 2001). Available at: <http://faolex.fao.org/docs/pdf/tan28349.pdf>; Alden Wily et al. 2016(c); World Bank. Land Governance Assessment Framework for Tanzania. Available at: http://siteresources.worldbank.org/INTLGA/Resources/LGAF_Synthesis_Report_Tanzania_2015.pdf; Veit, P. et al. 2008.

²⁶ The national-level statutory and regulatory frameworks assessed do not explicitly grant communities the right to receive compensation when their land is expropriated. Communities are granted temporary use rights under Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds, 2010; however, compensation for expropriation is not provided by the regulation. Government of Thailand. 2007. Constitution of Thailand. Available at: https://www.constituteproject.org/constitution/Thailand_2007.pdf; Government of Thailand. 1987. Immovable Property Expropriation Act, B.E. 2530. Available at: [http://portal.mrcmekong.org/assets/documents/Thai-Law/Immovable-Property-Expropriation-Act-\(1987\).pdf](http://portal.mrcmekong.org/assets/documents/Thai-Law/Immovable-Property-Expropriation-Act-(1987).pdf); Government of Thailand. 2008. Act Promulgating the Land Code B.E. 2497. Available at: <http://faolex.fao.org/docs/pdf/tha33176.pdf>; Government of Thailand. 2011. Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds; Alden Wily et al. 2016(c).

²⁷ When read together, Section 5 of the Land Acquisition Act, 1965 and section 4 of the Land Act, 1998 indicate that communities are entitled to compensation when their land is expropriated. Section 4 of the 1998 Land Act states that "any person, family, or community holding land under customary tenure on former public land **may** acquire a certificate of customary ownership", however, certificates are not required for receiving compensation. Section 3(1) of the Land Act 1998 provides that "customary tenure is a form of tenure...providing for communal ownership and use of land"; customary landownership is also provided for by Article 237 of the Constitution. In terms of limits on the types of land, section 44 of the Land Act excludes wetlands, forest reserves, national parks, and other protected areas from customary ownership, since the law states that these areas are held by the government in trust for the people. Section 77 of the 1998 Land Act provides that "the District Land Tribunal shall, in assessing compensation...take into account...(a) in the case of a customary owner, the value of land shall be the open market value of the unimproved land." The laws assessed do not establish time requirements for receiving compensation. Government of Uganda. 1995. Constitution of Uganda. Available at: http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf; Government of Uganda. 1965. Land Acquisition Act 1965 (ch. 226). Available at: <http://faolex.fao.org/docs/texts/uga96348.doc>; Government of Uganda. 1998. Land Act (No. 16 of 1998). Available at: <http://faolex.fao.org/docs/pdf/uga19682.pdf>; Alden Wily et al. 2016(c).

²⁸ Article 75(2) of the Law on Land 2013 provides the right to compensation for "communities and religious establishments using land which is not allocated or leased land by the State and having a certificate, or being eligible to be granted a certificate of land use rights and ownership of houses and other land-attached assets under this Law but not being granted that certificate yet." The law does not establish a restriction on the types of land to which communities can claim right. Article 29 of the 2004 Law on Forest Protection and Development provides that forests can be provided to village population communities. The 2013 Law on Land does not establish development (improvement) requirements, or time requirements for receiving compensation. Government of Vietnam. 2014. Constitution of Vietnam. Available at: <http://vietnamnews.vn/politics-laws/250222/the-constitution-of-the-socialist-republic-of-viet-nam.html>; Government of Vietnam. 2013. Land Law No. 45/2013/QH13. Available at: http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_land/view; Government of Vietnam. 2014. Regulations on Compensation, Support, and Resettlement Upon Land Expropriation by the State. Available at: https://binhdinh.eregulations.org/media/47_2014_ND-CP_263604.pdf; Alden Wily et al. 2016(c); Government of Vietnam. 2004. Law on Forest Protection and Development. Available at: http://theredddesk.org/sites/default/files/law_on_forest_protection_and_development_-_vietnam_2.pdf

²⁹ When read together, Section 5 of the Land Acquisition Act, 1970 and section 7(2) of the Land Act, 1995 indicate that communities have a right to receive compensation when their lands are expropriated. Section 7 of the 1995 Land Act provides that "every piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognized." State land is broadly defined as "land which is not situated in a customary area" (section 2, Land Act, 1999). Furthermore, the Forest Act, 2015 indicates that communities can claim ownership to forest areas (section 2, 49, 50). Section 15(1) of the Land Acquisition Act 1970 provides that "no compensation shall be payable in respect of undeveloped land or unutilized land. Save where the land acquisition is unutilized land to which an absentee owner is beneficially entitled, compensation shall be payable in respect of the unexhausted improvements on unutilized land." The law establishes a

partial time requirement: section 15(3) of the Land Acquisition Act, 1970 states that "in the case of land in a rural area which is used for agricultural, pastoral or mixed agricultural and pastoral purposes, the land shall not be deemed to be undeveloped unless such land has not been used for cultivation or pasturage or mixed cultivation and pasturage, as the case may be, at any time during the period of two years immediately preceding the publication of the notice to yield up possession." Government of Zambia. 2016. Constitution of Zambia. Available at: <http://www.parliament.gov.zm/node/4834>; Government of Zambia. 1995. Land Act No. 29 of 1995. Available at: <http://faolex.fao.org/docs/pdf/zam9900.pdf>; Government of Zambia. 1970. Land Acquisition Act. Available at: <http://faolex.fao.org/docs/pdf/zam36114.pdf>; Government of Zamba. 2015. Forest Act, No. 7. Available at: Alden Wily et al. 2016(c).

³⁰ When read together, section 3(4) of the Land Acquisition Act (LAA), 2002 and sections 8(1)(a) and 12 of the Communal Land Act (CLA), 2004 (CLA) indicate that communities have a right to receive compensation for expropriated land. Under the CLA, "communal land" is defined narrowly as land granted to communities under the Tribal Trust Land Act, 1979, suggesting that registration is required and that there are restrictions on the types of common properties for which compensation claims may be made (Sec.3, CLA 2004). Furthermore, the Constitution suggests that compensation may only be provided for agricultural land held by communities (Art. 295(1) of Zimbabwe's Constitution, 2013). Section 20 of the LAA 2002 provides compensation based on the value of the loss of land for land other than agricultural land required for resettlement purposes. When agricultural land is acquired for resettlement purposes, no compensation is payable in respect of its acquisition, except for improvements effected on it before its acquisition (Art. 72(3)(a); Art. 295(1) of Zimbabwe's Constitution, 2013). However, when non-agricultural land is acquired for non-resettlement purposes, compensation is for "any loss reasonably incurred" (Sec. 20, LAA 2002)... The laws assessed do not establish time requirements for receiving compensation. Government of Zimbabwe. 2013. Constitution of Zimbabwe. Available at: https://www.constituteproject.org/constitution/Zimbabwe_2013.pdf; Government of Zimbabwe. 1992. Land Acquisition Act, Ch. 20:10. Available at: <http://faolex.fao.org/docs/pdf/zim2771.pdf>; Government of Zimbabwe. 1983. Communal Land Act Ch. 20:04 (amended 2002). Available at: <http://faolex.fao.org/docs/pdf/zim8836.pdf>; Government of Zimbabwe. 1999. Land Acquisition (Disposal of Rural Land) Regulations (S.I. No. 287 of 1999). Available at: <http://faolex.fao.org/docs/texts/zim61669.doc>; Alden Wily et al. 2016(b).