

Democracy & Communities

Community Based Land Governance in 2018: An Overview of Trends

Liz Alden Wily

Independent land tenure specialist

lizaldenwily@gmail.com

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The research question ...

Is community-based property governance gaining legal support?

Positive Indicators

1. Recognition & provision for community property **is rising** in national laws
2. Above is being made easier, such as through recognition of communities **as legal persons** to obviate need for formation cooperatives or other legal entities
3. Devolving authority over community lands is **not being withheld** from community landowners
4. Legal provision for **institutions** to govern community lands is rising
5. **Inclusive decision-making** by communities is becoming more obligatory in law

Context

- **Community land tenure** ('customary' or the tenure of registered collectives or cooperatives) is a property regime today, along with statutory and Sharia property regimes. 74 of 100 countries in random sample legally acknowledge community tenure in one or other context, for one or other region or purpose (L. Alden Wily, *Community Lands in 2018: A Global Overview*).*
- Land and natural resource **governance increasingly devolved for stronger accessibility and accountability**
- **Socio-spatial 'community'** vibrantly exists in agrarian economies in 21st century (c. 150 of 200 states). Operating 'community landholding' is also evident in industrial economies including Spain, Portugal, Romania, Armenia, Scotland and land trusts in America)

*** Note: all provisional figures in this presentation derive from study: please await final publication before citing**

Assumptions that ...

Legally supported community based-land governance in both urban and rural spheres **is increasing** – despite revitalized drive for individualization/privatization

Increased legal support for community property & community governance is mainly tied to -

- a. improving **legal recognition of customary tenure** as logically requiring **community-based governance**
- b. (gradual) delivery on promised **devolution**, including increasingly to most local levels of society (the village & urban neighborhood)
- c. Bottom-up **demand** as villagers and slum-dweller confront limitations in services and support from central government governance
- d. Rising recognition that **occupation in urban 'slums' is often community based and informally managed** as much as in rural communities
- e. Acknowledgement that 'collective property' is not outdated after all and does not mean communal farming anymore but means communal property for logically collective shared assets such as forests, rangelands, swamplands – but **this too means community based governance.**

Changes reviewed -

Rise in legal provision for -

1. **Community lands** as collective property as a legitimate modern form of land ownership
2. **Trends in legal provision for community lands** 1980 & 1918 compared
3. Communities admitted in law as **natural persons** such as for individuals enabling easier recognition of communities as lawful owners
4. Law provides for community lands to be **lawfully regulated & administered** by communities, obligatory **inclusive decision-making**, and adaption of **institutions** for this at local level

Framework: for Testing Hypotheses:100 Country Land Laws

Sources: Author's Research & LandMark @ www.landmarkmap.org.

Paper: L. Alden Wily, *Community Lands in 2018: A Global Overview*
(under final prep for journal review):

| REGION | % COUNTRIES | % IN SAMPLE |
|---------------|-------------|-------------|
| AFRICA | 28.0 | 32.0 |
| ASIA | 25.0 | 25.0 |
| LA & CARIB | 17.0 | 19.0 |
| OCEANIA | 7.2 | 5.0 |
| NORTH AMERICA | 1.0 | 2.0 |
| | 100.0 | 100.00 |

1. Indicator 1: How significant is legal provision for community lands as lawful property?

74 of 100 country land laws provide legal recognition in 2018

1. Strength of provision among 74 cases-

- 54 (77%) recognize community lands as holding equivalent legal force & effect as 'private' statutorily registered right
- 12 (16%) provide unequal playing field as only community lands are vested in State as trustee (mainly for communities which are IP)
- 5 (1.35%) recognize community rights only for specific resources

Indicator 1 cont'd

2. Recognition Depends Upon Registration & Entitlement

32 of 74 cases (43.24%) do **NOT** require formalization for recognition

36 (**48.6%**) **DO REQUIRE** formalization for recognition as lawful property

5 (6.7%) depend upon written agreements/allocations for recognition

3. Limitation of alienation of community property

From sample of 56 country land laws:

34% permit sale

21.4% permit some types of land within community property to be sold (e.g. private homesteads)

32% do not permit sale but permit lease of lands

12.5% disallow any sales, leases, renting etc.

NOTE: all cases subject to **majority consensus, rules & limitations** and may require permission from state authorities

Indicator 2: Is legal provision for community property increasing?

Dates of main law providing for community property in 18 year tranches [Pre-1962: 8 = 10.8%]

1. 1962-1980: 8 = 10.8%
2. 1981-1999: 19 = 25.7%
3. 2000- 2018: 39 = **52.7%**

Indicator 3: Are communities considered to be natural or legal persons for purposes of owning land?

MAIN LEGAL TRENDS ARE FOR LAND LAWS TO NOW –

1. **ACCEPT** COMMUNITY AS A LEGAL PERSON TO SAME DEGREE AS INDIVIDUAL OR FAMILY ON BASIS OF CUSTOMARY NORMS THAT THIS IS THE CASE
2. &/OR TO PROVIDE **TYPES OF TITLE OR PROCEDURES** IN THE LAW WHICH ESTABLISH THE COMMUNITY AS A LEGAL PERSON ON REGISTRATION OF ITS PROPERTY

Means for community to secure identity as a natural/legal person for landowning purposes in 2018

1. The law explicitly accepts a **community** as a **lawful landowner eligible to own & register** collective property to same degree as **individual**: e.g. Mozambique, Tanzania, Afghanistan, Bolivia, Italy, Romania, Nicaragua, Papua New Guinea, Republic of Congo, South Sudan, Uganda
2. **Special form of title provided for communities** , so that registration of its land includes recognition of community as a legal person e.g. Spain, Portugal, Romania, Peru, Australia

3. Community may register itself in **two-stage procedure** through procedure described in the law and then applies for registration of its land: e.g. Kenya, Fiji, Cambodia

4. Community is **obliged to form & register a legal entity** as provided for in the law and which is then able to own the land: e.g. China (Collectives), Tajikistan (Pasture Associations), Tunisia (Land Collective), Cote d'Ivoire (legal entity), Cuba (Agricultural Cooperative), Laos (village entity), Armenia (Local Self-Governing Body), Mexico (*ejido* or *comunidades*)

Compared to dominant conditions in 1990 ...

1. Title is **vested in State on behalf of community**: *e.g. USA, Morocco, Zambia, Russia*
2. **No provision** for community to register its land although statutes recognize the land as collective owned property under customary tenure: *e.g. Sierra Leone, Ghana, Swaziland*

Note that mainly in *older* laws

Indicator 4: How far does land law provide for community to regulate & administer its own property?

This is provided for in only about half of sample of 44 countries -

1. 100% communities have primary legal authority over lands but (a) not exclusive (sometimes strong official powers ex-community imposed); (b) often unelected community bodies (e.g. Traditional Authorities); & (c) accountability of leaders is not often legally specified as obligatory.
2. In only 22 of 44 countries [50%] are *elected institutions* required by the law
3. In 22 of 44 countries [50%] local government or national bodies have legally defined decision-making or approval powers over some community decisions
4. In 34 of 44 countries [77.3%] communities may use *customary or other self-developed norms* to regulate their lands
5. In 24 of 44 countries [50%] *inclusive decision-making* is required by the law

From **10 newest laws** in the sample -

| | |
|------------------|---|
| Mali, 2017 | Village land commissions to be created but decree with details not available yet so powers of commissions still unclear |
| Afghanistan 2017 | Strong community control over pastures but no requirement for inclusive decision-making by community and can tend to elites |
| Timor Leste 2017 | No provisions. Practices to be 'participatory' for 'community land reserves' to be set up to protect customary rights |
| Kenya, 2016 | Strong provisions for inclusive institutions & land governance for registered community lands: Community Assembly as ultimate decision-maker & elected Community Land Committee |
| Malawi, 2016 | Land Committees at Group Village Level, Headman ex officio with 6 elected members for 3 year terms |

- Vietnam, 2013 Elected heads of groups/communities have powers but mainly implementation powers from higher level plans
- Tajikistan, 2013 Settlements & villages given significant powers over allocated pastures
- Vanuatu, 2013 Men, women & children form community assembly ('nakamal') with powers aided by state-appointed officers
- Republic Congo, 2011 (IP) Village level councils have powers, but no provisions in land law for indigenous people to govern lands inclusively
- Lesotho, 2010 Elected village governments must be accountable to community members

Conclusions -

1. Significant legal provision for community owned lands globally
2. This shows signs of expanding despite contrary privatization forces: individual and community property likely to be comparable classes of property by 2050
3. Means of recognition of communities as owners are getting easier, especially with legal acknowledgement as natural persons with legal personality as property owners
4. IP sector of communities is not enjoying equivalent legal rights to dispose of lands but for protective reasons for future generations of owners
5. In non-IP sectors signs in legal provisions that homesteads will become increasingly privatized with residual shared lands retained in similar arrangements to the attached off-farm common properties found in Europe
6. Mechanisms for community land governance of collective properties rising – but slowly.
7. Customary norms for governance accepted without strong legal caveats for hereditary leaders to make decisions in inclusive & accountable manner: presently an issue in especially Africa