

# WHAT RIGHTS?

## A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights

Rights and Resources Initiative  
May 2012



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## PREFACE

Interest in who owns and manages the world's forests has grown steadily over the past decade. In part, this is due to major international initiatives like REDD+ or FLEGT that have raised awareness of the widespread problems of tenure insecurity. More importantly, however, this is due to the increased voice of local communities and Indigenous Peoples claiming their rights to lands and resources, and to greater political openness and support among citizens, governments and the private sector for recognizing these rights. This growing demand for reform has led to new national legislation and international commitments, including the relatively recent adoption of UNDRIP and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.

But despite this growing interest, there has been very little detailed analysis of the growing body of land and forest legislation, and what tenure rights they recognize. And there has not yet been an analytical framework or tool to compare legislation, monitor implementation, or assess whether national land and forest law is consistent with the emerging set of international commitments.

This new report is a first attempt to provide that framework and to analyze the legislation of a majority of the world's most forested developing countries. It shows that since 1992 there has been a dramatic increase in legislation that recognizes rights, as well as progress on the ground and a substantial increase in the amount of land owned or controlled by communities and Indigenous Peoples.

Yet, the report also reveals the sad fact that these gains are limited to a relatively small set of countries and the majority of the world's forests remain claimed by governments with almost no recognition of the legal rights of the millions of people who have inhabited and managed the forests for generations. This disconnect is becoming more apparent and more urgent to rectify—especially as forest lands are increasingly targeted for investment. Africa is particularly far behind, where approximately 97% of the forests remain claimed as state property. We know, of course, that statistics and laws do not always tell the whole story. Indeed, a major finding in this report is that the laws on the books that recognize local tenure rights are, by and large, very limited and weakly implemented.

Forests cover about 30 percent of the planet's surface and store some 80 percent of all terrestrial carbon, as well as provide the food, water, and wildlife essential for the survival of billions. The fact that the ownership of the majority of this globally strategic resource remains contested is in no one's best interest. It puts the future of all humanity at risk. We hope that this report helps raise the level of action to address this climate, development and humanitarian crisis.

**Andy White**

*Coordinator*

Rights and Resources Initiative

## Abbreviations and Acronyms

<b>ASL</b>	Location-based Social Association ( <i>Agrupaciones Sociales del Lugar</i> ) (Bolivia)
<b>DRC</b>	Democratic Republic of the Congo
<b>DUAT</b>	Right of use and benefit of land ( <i>Direito de uso e aproveitamento da terra</i> ) (Mozambique)
<b>FLEGT</b>	Forest law enforcement, governance and trade
<b>FPIC</b>	Free, Prior and Informed Consent
<b>ICMbio</b>	Chico Mendes Institute for the Conservation of Biodiversity ( <i>Instituto Chico Mendes de Conservação da Biodiversidade</i> ) (Brazil)
<b>INCRA</b>	National Institute for Colonization and Agrarian Reform ( <i>Instituto Nacional de Colonização e reforma Agrária</i> ) (Brazil)
<b>ITTO</b>	International Tropical Timber Organization
<b>JFMA</b>	Joint Forest Management Agreement (Tanzania); Joint Forest Management Area (Zambia)
<b>LCFC</b>	Local Community Forest Concession (Cambodia)
<b>Mha</b>	Millions of hectares
<b>NTFP</b>	Non-timber forest product
<b>PNG</b>	Papua New Guinea
<b>RECOFTC</b>	RECOFTC–The Center for People and Forests
<b>REDD</b>	Reducing greenhouse gas emissions from deforestation and forest degradation
<b>RRI</b>	Rights and Resources Initiative
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>VPA</b>	Voluntary partnership agreement

For full descriptions of the tenure regimes found in each country in this report, see the Country Profile Annexes on the Rights and Resources Initiative's tenure data webpage.

[www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata)

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Indigenous Peoples and forest communities have long-established customary land rights to a large proportion of the world's forests. In past decades, some countries have passed legislation that begins to recognize these rights. An emerging body of international law and jurisprudence, signaled most significantly, perhaps, by the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, also recognizes such rights.

This report analyzes national laws that relate to the forest tenure rights of Indigenous Peoples and communities. It assesses whether the legal systems of 27 of the world's most forested developing countries recognize the rights of Indigenous Peoples and communities to access, withdraw, manage, exclude, and alienate forest resources and land, the duration of those rights, and their extinguishability (collectively in this report, these are called the “expanded bundle of rights”). The countries included in this study are home to 2.2 billion rural people and contain approximately 75 percent of all forests in developing countries.

The study identifies a total of 59 forest tenure regimes in the selected countries that recognize or allocate forest tenure rights to Indigenous Peoples and communities. Of these regimes, 25 are in Latin America, 17 are in Asia, and 17 are in Africa. These regimes involve many different institutional arrangements used by governments to recognize the rights of Indigenous Peoples and communities to forest resources—such as land titles, management conventions, concessions, and written permission to inhabit and/or participate in the management of environmental conservation areas. This study does not attempt to assess whether the rights under these national legal instruments comply with international human rights laws or the rights of Indigenous Peoples that are internationally recognized. Indeed, identifying whether national legislation complies with international law and the decisions of regional human rights commissions is a critical next step recommended by this study.

The adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in May, 2012, signal a growing, but still limited, global commitment to recognizing the forest tenure rights of communities. While they remain voluntary, the analytical framework presented in this study can guide future assessment of countries' fulfillment of the guidelines.

Eighty-six percent (51 of 59) of the tenure regimes in this study have been established since the 1992 Earth Summit in Rio de Janeiro. Fourteen of the regimes were designed explicitly to recognize rights held by Indigenous Peoples, while the rest targeted other forest communities such as Afro-descendent communities in Latin America, settler, and peasant communities. Although Indigenous Peoples and other forest communities' rights are now more recognized than ever before, the study finds that the vast majority of the identified tenure regimes restrict community rights by not recognizing one or more of the rights within the extended bundle of rights.

A bare majority of the regimes in this study—54 percent (32 of 59)—guarantee the combined rights of access, commercial exploitation and forest resource management, provided there is compliance with management plans or licensing requirements. Thirty-six percent (21 of 59) do not recognize the right of Indigenous Peoples and communities to exclude others from their forest lands. In 58 percent (34 of 59) of the surveyed regimes, rights are granted to communities for an unlimited

period, and in 68 percent (40 of 59) the law provides due process and compensation if the state extinguishes rights. Sixty-six percent (39 of 59) forbid the alienation (through lease, use as collateral, or sale) of community lands or the rights to them.

Although many rights are now recognized in law at the national level, numerous challenges must be surmounted if these rights are to be realized in practice. Data on the area of forest under each regime show the limits of implementation—often the result of bureaucratic obstacles and weak or waning political will.

Latin America has the highest percentage of regimes that guarantee the rights of access, commercial exploitation, and forest resource management. It is also the region in which more rights are constitutionally guaranteed for an unlimited period and where the greatest number of the regimes cannot be extinguished unless governments follow the due process of law and provide adequate compensation. Asia has a mixed record, and Africa lags behind. Since 2000, many African countries have approved laws recognizing the rights of communities to forest resources. However, six of the 17 surveyed regimes in the region established by national laws cannot be implemented due to a lack of supplementing regulations that clearly define the rights of communities and the processes by which those rights can be recognized in practice.

In sum, these findings show significant legal progress since 1992, but a major gap in application and a predominance of circumscribed and contingent rights regimes. The lack of clarity in so much of the world's forest is cause for major concern. Clearly, much more can and needs to be done to ensure the full recognition and enjoyment of legal tenure rights by Indigenous Peoples and communities. Renewed global commitment to sustainable development at the Rio+20 Earth Summit provides an opportunity to prioritize the full recognition of the tenure rights of Indigenous Peoples and local communities. Reaching the goals of sustainable development requires this fundamental action.

The findings in this report have major key implications for governments, communities, Indigenous Peoples, and international actors (Section 7: Implications and actions: Next steps for forests, people and the global development community). Many of the rights analyzed in this study are limited in scope, duration, and completeness, which can hamstring international development, climate and legality initiatives. Even when rights are recognized by law, Indigenous Peoples and local communities, and their governments, require support to exercise them. Moreover, the rights recognized by international law frequently remain missing from national law. Efforts to assess the lack of compliance and means of redress can be undertaken using the findings of this analysis.

Considering the mounting threats to forests, people, development and the climate that weak land rights pose, now more than ever, the global development agenda must include specific efforts focused on securing the tenure rights of Indigenous Peoples and forest communities. Doing so will require a clear understanding the rights on paper and how they are implemented. It will also require innovative approaches to mobilize political support, financing and technical assistance.

# INTRODUCTION

In the past several centuries, forests that were previously the domain and property of their inhabitants were declared public and claimed as state-owned. Governments have long viewed these “undeveloped” spaces as reservoirs of untapped economic potential for logging revenues or as frontiers for agricultural expansion.<sup>1</sup> The people who customarily owned those forest resources and whose cultures, social structures, and identities were intertwined with them were seen by states to be using the forests at the discretion of government and until government found an alternative, “more productive” use. Conventional environmentalism has taken a similar top-down view of forests, albeit with far different outcomes in mind. In that view, forests should be protected for their biological diversity, as sources of untapped scientific knowledge, for their role in protecting sources of water, as refuges for endangered species, and, more recently, for their ability to absorb and contain carbon.

Living at the nexus of powerful economic development and environmental pressures, traditional forest communities have historically experienced high levels of marginalization, violence, intimidation, displacement, and the destruction of their cultures and livelihoods. Ultimately, the conflicts over forest resources created by this injustice have undermined both the economic and environmental goals of governments and elites.

## 1.1 Progress and Problems in Recognizing Rights

The 2002 report *Who Owns the World's Forests?* by White and Martin<sup>2</sup> found that even though this profoundly asymmetrical relationship between states and forest peoples was changing, governments still had a long way to go to bridge the gap. In 2002, 77 percent of the global forest area was administered directly by governments, while only four percent was officially designated for use by Indigenous Peoples and communities, and seven percent was owned by Indigenous Peoples and local communities. The remaining 12 percent of the global forest area was owned privately by individuals and firms.<sup>3</sup>

The 2008 and 2010 reports, *From Exclusion to Ownership* and *Tropical Forest Tenure Assessment*, expanded the number of countries examined within White and Martin's framework.<sup>4</sup> These reports

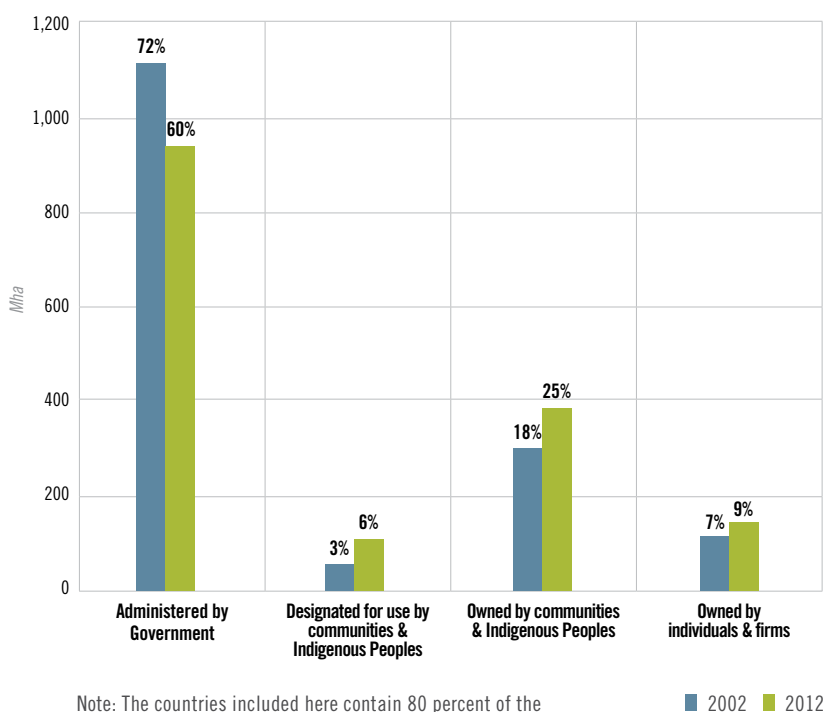
concluded that, between 2002 and 2008, the global area of state ownership of forest lands had declined and that there had been corresponding increases in the area of forests designated for use or owned by Indigenous Peoples and communities. Additional regional studies further confirmed this trend.<sup>5</sup> These shifts were strongest in developing countries: in 2002, 21 percent of forests in developing countries were owned or designated for use by Indigenous Peoples and communities. Today, approximately 31 percent of the forests in developing countries are owned or designated for use by Indigenous Peoples and communities (Figure 1).

Nevertheless, these reports found that very little was known about the range of mechanisms used by states at the national level to recognize and allocate tenure rights to Indigenous Peoples and communities, especially in developing countries. Many individual tenure regimes and national tenure systems had been analyzed within their own contexts by academics and practitioners,<sup>6</sup> but the absence of a systematic analytical framework for comparing these distinct statutory tenure regimes across contexts made it difficult to gauge and track global trends in recognizing and allocating rights.

In an attempt to fill this gap, this study presents a legal analysis of national laws in 27 of the world’s most forested developing countries (eight in Latin America, nine in Asia, and 10 in Africa—see Section 3). The countries included in this study are home to 2.2 billion rural people and contain approximately 75 percent of all forests in developing countries.<sup>7</sup> The scope of this study was limited to developing countries because they contain most of the world’s tropical forests and have exhibited some of the biggest changes in tenure distribution in recent decades.

The data presented here are sourced from governments and therefore reflect only the tenurial arrangements legally recognized by those governments. However, this official picture of tenure tends to be incomplete. For example, the laws of most developing countries do not recognize traditional ownership or reflect the mechanisms and institutions that rural populations use on a day-to-day basis to manage natural resources. In many cases, local tenure systems, broadly labeled in the literature as

**FIGURE 1: Forest tenure distribution in developing countries, 2002-2012**



Note: The countries included here contain 80 percent of the total forest estate of developing countries. For full details see: [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata).

“customary” or “traditional,” were created over long periods (often generations) by local users of rural and forest resources. Local practices and institutions, which can be influenced by state policies, are often distinct from state policies and allocate resources and rights very differently than do statutory systems. In many countries, customary tenure systems remain the most relevant and the most legitimate tenure systems for rural and forest communities. Statutory tenure systems, even those that recognize local rights to land, are often inaccessible to these groups

due to high access costs, elite capture, extensive bureaucratic barriers, and even the mere fact that statutory tenure arrangements do not reflect local social values or land-use practices. The state perspective is used in this study, not because it is necessarily the most legitimate, but because the official view is documented and quantified more consistently. The official view on land and natural resources shapes policy and its implementation, which can have profound consequences for local landscapes. Tracking forest tenure laws and measuring their implementation is part of evaluating the effects of such laws on the ground. Perhaps most importantly, this information can be used by Indigenous Peoples and communities to check if the statutory systems in their countries comply with the land-rights provisions of international laws and commitments.

*Today, approximately 31 percent of the forests in developing countries are owned or designated for use by Indigenous Peoples and communities.*

As the world's forests become increasingly valuable for meeting global climate and development goals, taking stock of the statutory legal structures that define and regulate the rights of forest-dependent communities can provide helpful operational intelligence to communities, Indigenous Peoples, practitioners, governments, and civil-society groups wishing to address the imbalances in tenure distribution, or to enhance the way in which forests are managed. In the last several years, the concept of reducing greenhouse gas emissions from deforestation and forest degradation (REDD) and its more evolved form, REDD+,<sup>8</sup> has been the principal international driver behind increased interest in tropical forests. Yet international commitments to combat deforestation date back decades. Agenda 21 and the Forests Principles, which emerged from the 1992 Earth Summit, called for international, national, and local efforts to combat deforestation through a variety of improved forest management techniques and policies.<sup>9</sup> Evidence from the literature shows that communities with strong management authority and sense of security tend to conserve forest resources, carbon, and biodiversity, as well as enhance livelihoods.<sup>10</sup>

The original research and analysis presented in this publication and its online country annexes (see [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata)) provide information on the tenure rights of Indigenous Peoples and communities recognized by law, the limits of those rights, and the responsibilities that come with them. This information should prove useful in improving laws and the ways in which they are implemented on the ground.

Understanding the basics of the laws on the books can provide REDD+ practitioners, for example, with useful guidance when developing benefit-distribution systems or in identifying where law and policies must be reformed to ensure success. Understanding whether a community has the right to exclude outsiders within a state's legal framework will help in understanding who is actually preventing deforestation—or who is not legally permitted to take action against deforesting actors. Related to this, this study indicates where communities are autonomous in their management of forests and where they have less independence from forest authorities.

Beyond climate interventions, this study provides a comparative analysis of countries and regions and identifies trends. It shows the heterogeneity of tenure regimes and the complexity of forest policy, underlining the need for analysis to identify commonalities, differences, and shortcomings across the world. The success of the sustainable development agenda rests on respect for human, civil, and political rights, which in turn affects how local actors use and benefit from their natural capital. This analysis can help identify areas where a push for the implementation of existing legislation is needed, and identify where efforts must be made to amend the law or even to introduce

new legal regimes recognizing the rights of forest communities. Civil-society groups can use this research to target their actions more specifically at provisions that hinder or enhance the rights of communities, and especially for education campaigns to ensure that communities know what rights they enjoy under law.

For each of the selected countries, this study asks:

1. Do communities have legal rights to forest resources?
2. How are these rights legally recognized?
3. What rights to forest resources (i.e. access, withdrawal, management, exclusion, and alienation) are recognized by the law, for how long, and what rights to due process and compensation do communities have should the state extinguish their rights?

It answers these questions by:

1. Identifying the statutory tenure regimes regulating community rights to forest resources.
2. Describing the legal instruments and frameworks used by government to establish these regimes.
3. Analyzing the set of rights, and their duration, in each identified regime.

As explained below, we have chosen legally recognized rights of Indigenous Peoples and other forest communities as the unit of analysis because forests are usually—although not exclusively—managed as common-pool resources.<sup>11</sup> Several of the countries in the study have created more than one tenure regime to recognize the rights of Indigenous Peoples and communities. The rights potentially recognized by a tenure regime can vary significantly according to the context and desired outcomes. In order to compare community forest tenure regimes and to identify particular regional and global patterns in the recognition and allocation of rights, we used the “bundle of rights” typology to guide analysis.

This typology was popularized in common-property scholarship by Schlager and Ostrom,<sup>12</sup> although it has been a regular feature of property-rights law theory dating back to Roman law. In this study, the bundle of rights comprises the rights of *access*, *withdrawal*, *management*, *exclusion*, and *alienation*. We take the bundle two steps further to incorporate the temporal and resilient dimensions of rights. Certain regimes expire after a given period, while others confer rights to communities in perpetuity. Therefore, the expanded bundle considers *duration* as a right to be examined. The resiliency of rights is evaluated in terms of whether the law guarantees communities due process and compensation if the state revokes or extinguishes those rights.<sup>13</sup> The right to due process and compensation is referred to in this study as *extinguishability*. A great deal of variability exists within each of these seven rights categories; each is elaborated on in Section 2.

*In many countries, customary tenure systems remain the most relevant and the most legitimate tenure systems for rural and forest communities.*

The data needed for this study was collected through a literature review and an analysis of approximately 170 laws and other legal documents. Subsequently, about 90 contributors with national expertise verified the preliminary results, helping to ensure that the dataset was as complete as possible at the time of publication, and that analyses were based on the most up-to-date laws and regulations. An attempt was made to identify all community tenure regimes in all countries selected for analysis. However, we acknowledge that, given the complexities of the legal regimes governing forest and land in the 27 selected countries, some may have been unintentionally overlooked.

## 1.2 Context and Caveats

Several important caveats apply to the data and analysis presented in this report. First, and as explained in detail in Section 1.1, they apply to statutory tenure systems only. Significant conflicts between statutory and customary rights are noted and described in the country profiles (see [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata)).

Second, the data are derived from legally binding documents and regulations. While a law might provide Indigenous Peoples and communities with a wide spectrum of rights on paper, these rights may not be exercised in practice. The data do not account for the quality or degree of implementation of the described rights regimes. Where possible, the area of forest under each regime is presented (Tables 10, 11, and 12) to provide an indication of the extent to which a given regime has been implemented.

Understanding the statutory distribution of the bundle of rights to forest resources held by Indigenous Peoples and communities is an important first step in evaluating the global picture of community rights. Here are some reasons why:

- One can only exercise their legal rights if they are aware they exist. Knowing which statutory rights exist is a pre-requisite for their implementation.
- “Bad” law cannot lead to “good” implementation. Communities need to understand the law in order to evaluate it critically. A better understanding of the law also plays a critical role in guiding and informing effective pro-community advocacy.
- A global analysis of the legislation and policy instruments used by countries allows the identification of best practices and establishes a basis for comparative analysis.

The data used in this study are based on national-level legislation only. Subnational tenure regimes were not taken into account due to the difficulty in accessing the relevant subnational legislation. It is equally difficult to find local experts with knowledge about specific subnational arrangements and agreements who can verify the accuracy of the collected data. It is known, however, that in some countries community rights to forest resources vary widely depending on the state or subnational entity involved in the administration and oversight of the tenure regime. This is the case, for example, in Nigeria, India, and Malaysia. This study does not consider rights to subsoil resources, although this is an important issue in many places.

Since legislation is open to interpretation, when more than one scenario exists within one tenure regime, the analysis assumes a “best-case scenario.” This assumption provides for the most generous interpretation of the right recognized by law.<sup>14</sup>

This study does not endorse the notion that recognizing the entire bundle of rights is always the optimal outcome for all community tenure regimes. Rather, the parameters of particular tenure frameworks must be based upon the more fundamental political human and civil rights of citizens and be negotiated contextually. In some contexts, the rigidity of community and social boundaries determined by exclusion rights and the fluidity of land enshrined in alienation rights can, in practice, increase the vulnerability of rural livelihoods and community rights. We acknowledge this limitation in our research and highlight the need for further investigation.

This study does not analyze the wider set of instruments that provide or recognize forest communities’ and individuals’ rights, and as such, it does not review the extent to which statutory

laws are in compliance with countries' binding obligations under nationally ratified international laws. For example, it does not analyze the rights of Indigenous Peoples enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP; Box 1) or the International Labour Organization's Convention No. 169 on Indigenous and Tribal Peoples. These documents have been endorsed by governments and form part of accepted international law and norms. They require governments to take specific actions to ensure and protect the rights of Indigenous Peoples, and particularly to recognize their territorial rights. Nor does it analyze compliance with international human rights laws, such as the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Racial Discrimination, or the Convention on Biological Diversity. We do acknowledge, however, that many of the analyzed countries have yet to revise their forestland and land tenure regimes to be in full compliance with their international obligations. Although not specifically assessing compliance with international law, we hope to provide a useful tool with which to assess a country's progress towards fulfilling its international obligations.

In reviewing national laws we do not endorse the argument that all rights emanate from the state. Rights are fundamental to the dignity of the individual and the survival of peoples and communities. By analyzing the statutory community forest tenure rights that exist today we hope to shed light on what is often a murky situation. We also acknowledge the legitimate claim of governments to regulate public goods, provided that their actions are respectful of the rights of their citizens. Rights held by Indigenous Peoples in particular must be upheld, despite the limits of statutory law and states that have ratified UNDRIP and other human rights related conventions have an obligation to do so. As Owen Lynch notes, "today, it is no longer premature to assert that international law, including international customary (comparative/national) law, mandates legal recognition of native/aboriginal title."<sup>15</sup> At a minimum, the rights recognized by international commitments like UNDRIP include the rights of access, withdrawal, management and exclusion. By expanding our analysis to forest communities we hope to provide useful information on trends, existing opportunities in the law, and the challenges facing the billions of people who rely on forest resources for their livelihoods and wellbeing.

## **BOX 1: ARTICLES OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES RELATED TO LAND RIGHTS**

**Article 8.2:** States shall provide effective mechanisms for prevention of, and redress for: (b) any action which has the aim or effect of dispossessing them of their lands, territories or resources.

**Article 10:** Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**Article 26.1:** Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

**Article 26.2:** Indigenous peoples have the right to own, use, develop and control the lands, territories and resources and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

**Article 28.1:** Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.



# THE BUNDLE OF RIGHTS APPROACH

## Analyzing legally recognized tenure rights of Indigenous Peoples and forest communities

Forest tenure rights are complex, dynamic, and context-specific. There are statutory rights that are held by individuals within communities, and there are statutory rights held by communities as a unit.<sup>16</sup> There are also customary tenure systems that govern much of the world's forest estate, but are not recognized by, or under the protection of, statutory law.<sup>17</sup> The rights of Indigenous Peoples to territory and to autonomous governance—now backed by emerging international norms and laws—require legal reforms by national governments.

The expanded bundle of rights used in this report provides a useful framework for assessing whether:

- (a) Communities can access forest resources (access rights), harvest timber or other forest products (withdrawal rights), make decisions over forest management (management rights), and exclude outsiders from their forests (exclusion rights).
- (b) The tenure regimes confer the right to lease a resource, sell it, or use it as collateral (alienation rights).
- (c) The recognition of rights has a set duration (i.e. are rights time-limited or perpetual?).
- (d) The law guarantees communities due process and compensation if the state revokes or extinguishes rights (extinguishability).

Each of these rights is described further below.

### 2.1 Access Rights

Access rights are the rights held by a community and its members to enter a forest area. Having this right to enter or pass through a particular space is the most basic tenure right and is closely linked to its opposite: the right to exclude or deny another party access to a particular resource.<sup>18</sup>

While access rights may seem self-evident, the reality is often far more complex, particularly if the state has granted the right of exclusion to another party—such as a private landowner, a

concessionaire, a protected-area manager, or an agency of government. If the rights-holding party in this alternative circumstance wishes to exclude a forest community or some members of it, or to give access rights to third parties who might use the forest resources contrary to the customs of said communities, they can do so legally.

In fact, much of the insecurity associated with community land in Africa derives from the legal enactment of the right of the private landowner, concessionaire, or park authority to exclude.<sup>19</sup> Once this right is enacted, any individual who does not have the explicit right of access (or permission to enter from the owner) and who is caught on the land in question can be expelled and even prosecuted for trespassing. However, even in cases where access rights are recognized by a country's constitution (e.g. in Local Community Forest Concessions in the Democratic Republic of the Congo—DRC—and *Adat Forest* in Indonesia), there is immense difficulty in implementing these rights in practice (e.g. due to a lack of implementing regulations or cumbersome bureaucratic procedures). Therefore, communities live on these lands at the discretion of the state or other powerful actors, or until the land is put to an alternate use or sold to a private owner.

## 2.2 Withdrawal Rights

The right to withdraw forest resources is perhaps the most important right for communities that are dependent on forest resources for their livelihoods. Withdrawal rights—or the right to benefit—may be for subsistence or commercial purposes. In forest areas, legal instruments frequently differentiate between the right to harvest timber and the right to harvest non-timber forests products (NTFPs).<sup>20</sup> In all of the tenure regimes surveyed in this study, communities have some form of withdrawal rights for either subsistence or commercial purposes.

Without explicitly protected and defined withdrawal rights, rural livelihoods are highly vulnerable to restrictions, particularly in regimes where the state retains a claim of ownership over land. In these situations, rights are limited to usufruct; access to particular resources may be restricted, either for conservation purposes or because the government is waiting to allocate those resources to larger-scale actors.

In such situations, commercial timber harvesting and even traditional activities such as hunting and the gathering of food and medicines can be criminalized, pushing them into informal economies or threatening traditional livelihood practices. Such regulations increase the forest-owner's chances of being arrested, having goods confiscated, or being harassed by the rent-seeking behavior of enforcement officials. They also increase the chances that market-access mechanisms will be captured by corrupt officials, exploitative middlemen, or criminal interests.<sup>21</sup> In Thailand, for example, neither the Forest Act, 1941, nor the National Park Act, 1961, recognize the customary rights of forest communities to forest resources; rather, they criminalize activities such as forest-product extraction and land occupation.<sup>22</sup> The penalties for violating these laws range from a fine to imprisonment for up to five years.<sup>23</sup> The criminalization of forest-dependent livelihoods is widely acknowledged to perpetuate, if not exacerbate, poverty.

Defined withdrawal rights therefore legitimize local livelihood systems and decrease the likelihood that communities will face threats to their traditional livelihoods or barriers to markets.<sup>24</sup> Withdrawal rights are often accompanied by limitations, however. In all the tenure regimes surveyed

for this study, communities must comply with the conditions established by forest management plans or specific licenses to withdraw timber products for commercial purposes. In most cases, these plans fail to recognize the traditional ways of managing natural resources practiced by Indigenous Peoples or other communities, even in the case of subsistence use. This implies, in practice, a restriction on the customary use recognized by statutory instruments. This is the case of the rights of forest communities within Community Protected Areas in Cambodia. There, the state recognizes and secures access for communities for their traditional uses, local customs, beliefs, and religions, and for those of indigenous ethnic minority groups residing within and adjacent to protected areas.<sup>25</sup> In order to fulfill the requirements imposed by the Ministry of Environment to continue using their forests, however, communities that have traditionally practiced shifting cultivation have had to abandon the practice.<sup>26</sup> Excessive legal barriers towards ensuring the legal compliance of local livelihoods can have a similar effect as criminalizing local practices, in that these regulations drive producers into illegal and often unsustainable modes of production.<sup>27</sup>

## 2.3 Management Rights

The right to manage a specific geographical area implies a higher degree of both responsibility and freedom. The concept used to define management rights is broad and includes those rights that communities have to regulate and make decisions about the forest resources and territories for which they have recognized access and withdrawal rights. The right to manage can be defined by the legal limits of other rights, and it can also be used to empower a community to articulate its rights to alienation or the exclusion of particular resources. For example, if a community can only withdraw NTFPs for subsistence purposes, the law may recognize the right to regulate internal access and patterns of use and to transform the NTFP resources for subsistence. This is the case, for example, for the Zones of Historical and Cultural Use and Value in Mozambique, in which communities have the right to manage timber and non-timber resources for subsistence purposes only.

Forests are complex ecosystems but can be used or managed with specific outcomes in mind, such as the use of particular species, the storage of carbon, to meet timber production goals, or to produce medicines or other NTFPs. Attaining such outcomes often requires specific management techniques and a balance in the access and withdrawal rights of particular individuals, households, and groups within a community. The right to decide the outcomes, and the practices for achieving them, is therefore highly relevant to communities and households dependent on forest resources.

Depending on a government's intended use or assumed ownership of a forest resource, management rights may be recognized in a variety of forms. In situations where governments claim ownership over the forests and wish to maintain those forests for conservation outcomes, communities may be compelled to share management responsibilities with government officials. This is the case with Tanzania's Joint Forest Management Agreements, Zambia's Joint Forest Management Areas, and Brazil's various sustainable-use areas (i.e. Extractive Reserves, Sustainable Development Reserves, and National Forests). Alternatively, the ability of communities to self-govern and manage their resources can be recognized in statutory law. In Peru, for example, Communal Reserves are managed according to a special procedure established by law which aims to

recognize the right of peasant or native communities to manage the forest resource in accordance with their organizational structures, through a long-term process by which they could consolidate their knowledge of conservation and the sustainable use of resources.<sup>28</sup>

However, management requirements designed to guide the use of the right to manage community tenure regimes can serve as a barrier to the regime's implementation, or weaken its capacity to function effectively. In Peru's Communal Reserves, the forest areas remain the "patrimony" of the nation; the state supervises management and guarantees that it is done in accordance with the law and management plans,<sup>29</sup> and if the requirements of the state are not met the rights can be suspended.<sup>30</sup> In most of the regimes surveyed in this study, government reserves the right to suspend communities' statutory rights to forest resources if forest management plans or agreements are violated.

## 2.4 Exclusion Rights

**"The power to exclude has traditionally been considered one of the most treasured strands in an owner's bundle of property rights." — Thurgood Marshall<sup>31</sup>**

No other right in the bundle so clearly reveals the points of power built into tenure regimes than that of exclusion.<sup>32</sup> It is both a defensive tool—in that those who are doing the excluding intend to protect their land, water, harvests, or trees from external capture or abuse—or an offensive tool, in that a more powerful party can expel a weaker one from a disputed resource. Therefore, the ability to refuse another individual, group, or entity access to and use of a particular resource is a clear projection of power: "exclusion is the normal rather than the exceptional state of affairs, and ... widespread aspirations for access to land implicitly include a wish for a degree of exclusionary power."<sup>33</sup>

The right to exclude is fundamental to the sovereignty of Indigenous Peoples. In practice, however, this right remains shallow because the powers of exclusion rarely extend to subsurface resources such as natural gas, oil, and minerals. When such deposits are found under community lands, governments have routinely reserved the right to extinguish some or all of the community's surface rights.<sup>34</sup> In Peru, for example, the search for oil, gas, and mineral reserves has led the government to allocate extractive concessions over almost all statutorily recognized indigenous territories, which give corporations the right to enter and explore those territories.<sup>35</sup>

Those who make decisions to exclude a particular set of "others" must either have the ability to enforce those decisions or they must be able to turn to a more powerful and legitimate authority to enforce them on their behalf. The right to legitimately exclude others from forest land is a critical right for forest communities. Having the recognized, and legal, right to exclude outsiders grants communities a high degree of power vis-à-vis neighboring communities, private actors, and the state. Nearly as important is the willingness of the government bureaucracy and judicial and enforcement institutions (police or forest authorities) to uphold this right. Unfortunately, in many developing countries, such institutions are subject to elite capture and may be used by governments, elites, and wealthy companies to extinguish rather than uphold communities' right to exclude.

Many community forest tenure regimes are designated on legally public land; the ability to determine who can enter a territory and use particular resources, therefore, is often as close to outright ownership as communities can achieve under existing law. The right to exclude inherently assumes that “the community” is a defined, uncontested, and geographically bounded entity. This assumption is particularly problematic in situations where there are multiple overlapping or mobile land-use systems, where community membership is contentious, and where there are disputed boundaries between neighbors. In these situations, the allocation of exclusion rights to one group may generate insecurity for other groups who have claims to the same territory, inevitably leading to conflict.<sup>36</sup> This has been termed “exclusion’s double-edged sword.”<sup>37</sup>

While some Indigenous Peoples and other forest communities may not wish to exercise the right of exclusion, this analysis can shed light on whether the law provides a framework within which to make that choice.

## 2.5 Alienation Rights

Perhaps no other right in the tenure bundle has provoked more contentious debate or caused more damage to Indigenous Peoples and other communities than that of alienation. The right to alienate one’s property—in other words, to transfer one’s rights to another entity—is seen by some as the truest test of ownership. For many traditional groups and communities, the idea of alienating their territories conflicts with their understanding of their relationship with land. The inclusion of alienation rights within a particular regime’s bundle can catalyze the rupture of group bonds and even become a vehicle for dispossession. In the United States, for example, the Dawes Act, 1887, which allowed for the individualization and sale of Native American tribal land, triggered a large-scale reduction in the area under Native American ownership.<sup>38</sup>

The *inalienability* of land (in terms of sale or long-term lease) can be viewed from a temporal perspective as a generational right, preserving the rights of the community and their descendants in perpetuity. This notion of inalienability is often cited as the moral basis of customary tenure systems—that the land “belongs” to a distinctly self-identified group and therefore no single individual or group of individuals has the right to sell the land. Despite this pervasive worldview, history provides countless examples of where alienation has occurred against the wishes of most people in a community. Grievances against controversial land transfers are often articulated by local communities, who say the transfers took place because certain actors misrepresented their authority to alienate the land.

Alienation rights are the cornerstone of land markets. As such, development economists have long advocated the formalization of informal and customary landholdings through transferable titles, with the aim of “unlocking” the wealth contained in these resources for the world’s poor.<sup>39</sup> In particular, this logic asserts that formalizing these previously unrecognized land claims would create opportunities for individuals, households, and communities to use their land as collateral to access credit. This approach to formalization also identifies the benefits that other alienation rights can bring, such as lease rights and rights to sale, which ideally would create fluidity in land markets and give rights-holders opportunities to access financial capital through the transfer of particular rights to their land. For example, a community might alienate their rights to trees by leasing their timber

withdrawal rights to an outside company, while retaining other withdrawal rights (i.e. for NTFPs) or access rights to the same area of land. In the context of REDD+, communities may be contractually compelled to suspend some of their withdrawal rights for a set period.

For this study, it is necessary to distinguish between the logic of denying individuals and groups the right to alienate land through formal law, and the locally rooted notion in which land is the fundamental locus of a particular community's or peoples' identity, wealth, and security. Few of the regimes examined in this study recognize alienation rights. The reasoning for this denial of rights comes from two potential trajectories. The first is that the state retains statutory ownership over the land in question. In this case, communities have no right to sell land but might, in particular instances, lease withdrawal rights to other actors. Community Forests in Cameroon and Liberia provide examples of this particular dynamic.

The second legal reckoning in denying alienation rights is based on the notion that the imbalance of negotiating power between communities and external actors (e.g. elites and corporations) implies that communities are at risk of being misrepresented, manipulated, or coerced into relinquishing their rights. This imbalance manifests itself in differences in:

- The ability to understand and navigate esoteric legal frameworks.
- Access to information about the current and future potential value of the resources being transferred.
- Access to sufficient finances to conduct independent social and environmental impact assessments.
- The ability to shop around for bids and to control and obtain information.
- In extreme cases, the ability to control or deploy violence.

The inalienability of rights may also serve to prevent the dissolution of the bonds upon which a community's collective identity and livelihood systems are based. This particular approach to inalienable rights is most commonly used in the context of the territories of Indigenous Peoples. In these contexts, inalienability serves as a legal guarantee against *de jure* or *de facto* threats to the integrity of the community tenure regime.

In two of the only three surveyed regimes in which all three alienation rights (i.e. the right to lease a resource, use it as collateral, or sell it) are granted, *Ejidors* in Mexico and Common Customary Lands in Papua New Guinea (PNG), the conditions for alienation are highly restrictive and specific. In the *Ejidors*, members of the *ejido* (*ejidatarios*) may only alienate common land title to commercial or civil corporations with participation from the *ejido* or from *ejidatarios*.<sup>40</sup> In PNG, the law prevents customary landowners from leasing land directly to outsiders;<sup>41</sup> they can only lease it to the state, which can then lease it to a private company.<sup>42</sup> This arrangement represents an increase in state control of forest resources in PNG. Previous laws<sup>43</sup> allowed customary owners to dispose of timber resources to any person, subject to certain safeguards. Imbalances between local communities and large international logging corporations served to justify this increased state involvement.

The Free, Prior and Informed Consent (FPIC) framework has in part been designed specifically to govern the transfer of land or resource rights between communities and other actors, whether temporarily or permanently, to ensure that any such alienation is conducted with the full support of landowners. Ideally, this system should be used to mitigate the inherent imbalances between parties in negotiations.

Ultimately, the utility and relevance of recognizing communities' alienation rights, or recognizing the inalienability of those rights, is a feature of tenure regimes that must be examined contextually and negotiated among local actors. Historically, communities and customary tenure

regimes have demonstrated an ability to adapt to new realities (e.g. shifting economic opportunities, changing demographics, and new political regimes). The degree of adaptability is contingent on a community's ability to make decisions as a whole, meaning that external solutions are not imposed on it and that internal debates are inclusive rather than the domain of local elites.

The set of alienation rights identified in the literature<sup>44</sup> also includes the transfer of rights through inheritance. In the laws examined herein, this right is generally transferred to individuals rather than groups. Therefore, it has not been included in the bundle of rights considered in this study.

## 2.6 Duration of Rights

**“Property rights serve human values. They are recognized to that end, and are limited by it.”** — Joseph Weintraub<sup>45</sup>

The permanence of land rights is vital to Indigenous Peoples, as guaranteed by UNDRIP, as much as it is to other private property owners. Forest management is by nature a long-term undertaking. The duration of allocated rights therefore plays a significant role in shaping actors' decision-making regarding resource use and management. Generally, those with short-term rights to forests are incentivized to make decisions that will maximize benefits in the short term. On the other hand, communities with long-term (or even perpetual) rights to forests will likely make decisions that favor longer-term habitation or use of the resource. For this reason, this study has incorporated the duration of allocated rights as a metric for comparing tenure regimes. While the duration of a particular set of rights may vary, this study categorizes duration as either limited or unlimited because, in our understanding of cases in which time-limits of any kind are imposed, the state retains a fundamental claim of ownership. On the other hand, when states allocate rights in perpetuity, they formally relinquish the notion that they will regain absolute claim over those resources, except in unique cases when the state's right to eminent domain (see below) is invoked. For Indigenous Peoples, the perpetuity of their claim to forest land is part and parcel of their claims to sovereignty and autonomy.

## 2.7 Extinguishability of Rights

Worldwide, governments retain the right to expropriate lands for the “public good” (a right known as eminent domain). The state's retention of this right is central to the notion of territorial sovereignty, in that it represents the ultimate degree of authority over a particular space, no matter what alternative claims also reside there.<sup>46</sup> However, the degree to which individuals, communities, Indigenous Peoples, and even corporations can challenge eminent domain is fundamental to the notion of property. In countries in which the state retains ownership claims over customarily owned community lands, governments often reserve the right to extinguish, alienate, or revoke one, several,

or all the rights enjoyed by communities and they can do so arbitrarily or for the public good, with or without consultation. Communities and Indigenous Peoples may have little recourse within the legal system to challenge such acts or to demand fair and adequate compensation. In situations in which communities have statutory rights to the land, they tend to have legal entitlements to due process if the government wishes to impose eminent domain. Should the communities lose their rights to the land, they are also often legally entitled to some form of compensation for their property and livelihood losses and/or displacement. This right to due process and compensation is the fundamental power dynamic explored in the series of studies by White and Martin; Sunderlin et. al; and RRI and ITTO.<sup>47</sup>

However, the devil is in the details. Even in cases where due process and compensation are guaranteed by law, the due process established by legislation can be so cumbersome and lengthy that contesting state action is difficult. In Guyana, Amerindian populations have the right to appeal ministerial decisions, but the Supreme Court, the competent court to judge on this matter, is notoriously slow and costly. In the Upper Mazaruni Land Rights case, for example, where Amerindian communities sought recognition of their aboriginal title and subsequent removal of mining activities, it took nine years from the date of filing the case in 1998 until the first hearings in 2007.<sup>48</sup> Furthermore, monetary reimbursement does not necessarily take into account historical, spiritual and other intangible values of forest resources and land.

The sense of security in a community—and therefore the perspective the community has on its management objectives and choices—is often a product of the degree to which its rights can be extinguished or whether those rights can withstand the arbitrary actions of others. Whether the law that recognizes the rights of the communities also ensures due process and compensation if those rights are extinguished is an important factor in our analysis of community tenure rights.

## 2.8 The Unit of Analysis

The unit used to measure the distribution of the bundle of rights is the community, which we define as a group of people (indigenous or other) who share a common interest or purpose in a particular forest and share the forest as a common resource. This definition is intended to be broad enough to include forest-dependent communities, Afro-descendent communities in Latin America, Indigenous Peoples, and other communities that have an interest in collective forest tenure rights. For this reason, only collective property rights are considered. Therefore, forest tenure rights held by the state (including those of subnational and municipal governments), or by individuals within or outside a community, are not considered. The main reason not to include individual rights is methodological. In many of the surveyed regimes, particularly where the state recognizes pre-existing customary rights (e.g. indigenous territories in Latin America, lands under India's Recognition of Forest Rights Act, 2006, and Indigenous Populations' Land in Republic of the Congo), the allocation of individual rights to forest resources is made according to traditional rights and customs. As a consequence, the accordance of rights to individuals varies greatly from community to community, making it virtually impossible to measure them systematically across countries.

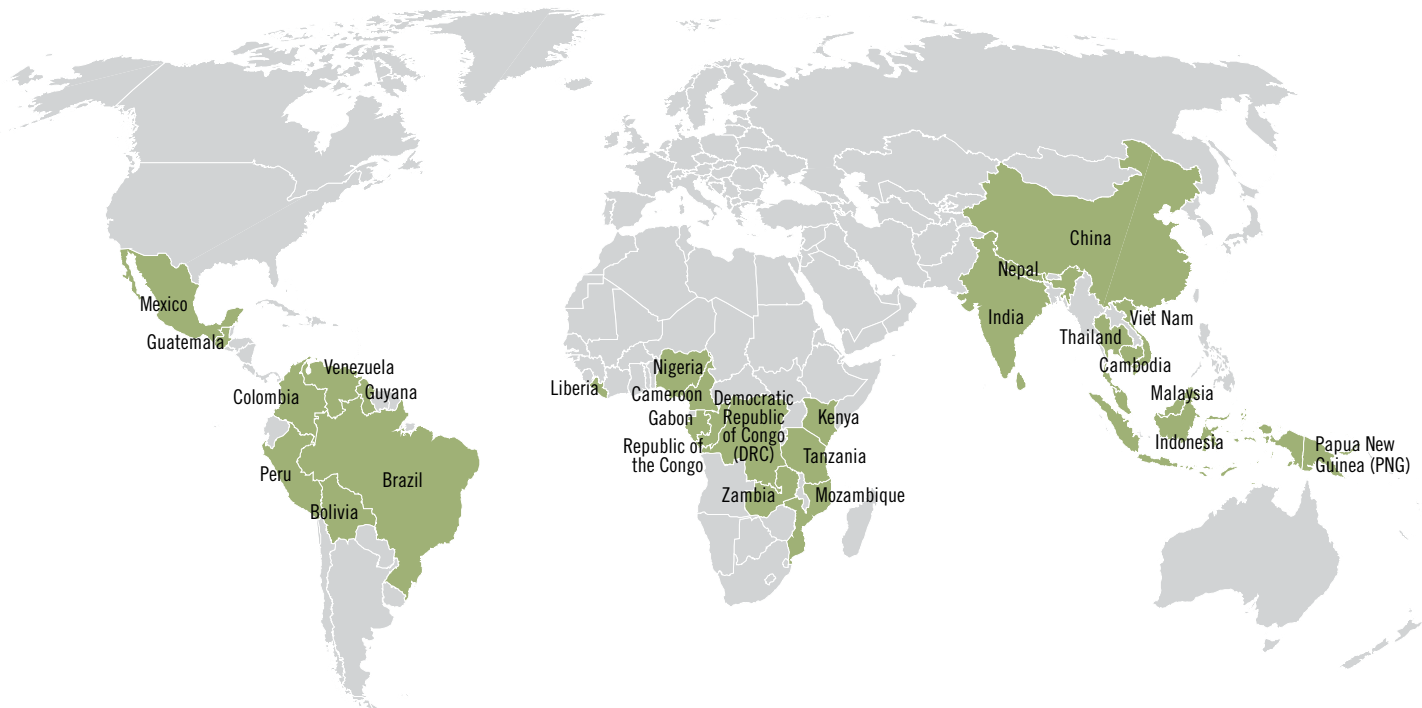


# WHAT RIGHTS?

## Recognizing the tenure rights of Indigenous Peoples and forest communities

Twenty-seven countries are included in this study, as follows. **Latin America:** Bolivia, Brazil, Colombia, Guatemala, Guyana, Mexico, Peru, and Venezuela; **Asia:** Cambodia, China, India, Indonesia, Malaysia, Nepal, PNG, Thailand, and Viet Nam; **Africa:** Cameroon, Republic of the Congo, DRC, Gabon, Kenya, Liberia, Mozambique, Nigeria, Tanzania, and Zambia. These 27 countries are home to approximately 75 percent of the world's tropical forests and were chosen to represent a variety of legal traditions and frameworks, as well as to cover large forested countries.

**FIGURE 2:** The 27 countries surveyed

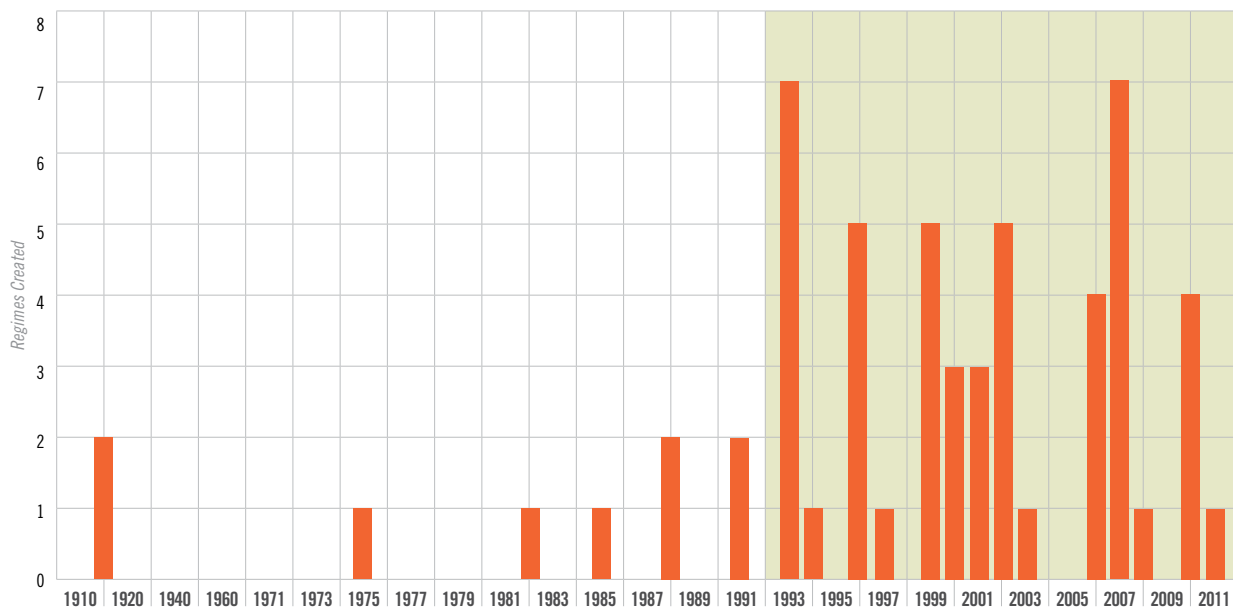


The study identified 59 forest tenure regimes in these 27 countries that recognized tenure rights for Indigenous Peoples and communities: 25 in Latin America, 17 in Asia, and 17 in Africa. The country with the most complex system of tenure regimes is Brazil (with a total of eight regimes), followed by Nepal (five), and Bolivia, Indonesia and Peru (four each). A larger number of regimes in a country does not necessarily mean that a larger area of land or bundle of rights has been transferred to Indigenous Peoples and communities. For example, China and PNG each have only one community forest tenure regime, but the area of land comprises 58 percent and 97 percent, respectively, of the country's total forest area. In contrast, while there are four community tenure regimes in Indonesia, the total area of forest allocated to communities constitutes only 0.1 percent of Indonesia's total forest area.

Twenty-five of the surveyed countries have one or more national laws recognizing the statutory rights of local and Indigenous Peoples to forest resources. The only exceptions are Malaysia and Nigeria, where no community tenure regimes were found to exist at the national level. Both Malaysia and Nigeria are federations, and forest and land laws are the responsibility of individual states. The states, and not the national government, therefore, have jurisdiction to create legislation regarding forest tenure rights. In Malaysia, all states have recognized some community rights to forest resources.<sup>49</sup> In Nigeria, the only state that officially recognizes community rights to forest resources is Cross River State, which approved a new Forestry Commission law in September 2010. A National Forestry Act, which includes community-based arrangements, the decentralization of responsibilities, and the devolution of powers to local actors, is currently under discussion but has not yet been approved.<sup>50</sup>

Eighty-six percent (51 of 59) of the surveyed regimes were established between 1992 and 2011 (Figure 3). Of these, 60 percent (31 of 52) were established after 2000. Latin America led the way: in that region, seven of the eight surveyed countries (the exception being Guyana) recognized the

**FIGURE 3:** Year of legislation recognizing tenure rights of Indigenous Peoples and forest communities in this study



Source: Forest tenure database. See [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata).

rights of Indigenous Peoples and communities to forest resources before 2000. Latin America was also home to the first community tenure regimes that were identified in this study. *Ejidos* and *Commundades* in Mexico were established following the 1917 revolution.<sup>51</sup> In contrast, only four (China, Indonesia, Nepal, and PNG) of the nine Asian countries and two (Cameroon and Mozambique) of the 10 African countries in the sample established community forest tenure regimes before 2000.

*Recognition of the tenure rights of Indigenous Peoples and communities is often the product of sustained pressure, years of negotiation, and conflict.*

## 3.1 Governments use various institutional frameworks to recognize rights

Patterns are emerging in the institutional instruments that governments use to allocate resources or recognize rights. Some of the most commonly used instruments are providing land titles to Indigenous Peoples and other traditional communities (most prevalent in Latin America); management conventions between governments and communities that temporarily transfer some of the rights and responsibilities for state forest land to local communities (most prevalent in Africa and Asia); and agreements that allow communities to reside within and/or participate in the management of a conservation area, provided they comply with the area's environmental regulations (Table 1).<sup>52</sup> This latter instrument is gaining increasing traction in all regions, which may be an indication that governments worldwide are beginning to shift away from the dominant perception that Indigenous Peoples and rural communities are a threat to the environment. Instead, they are recognizing that local land-use and management strategies, informed by generations of experience and adaptation to changing environmental, social, and economic conditions, can play a positive role in environmental conservation.

Recognition of the tenure rights of Indigenous Peoples and communities is often the product of sustained pressure, years of negotiation, and conflict. An important outcome of some struggles is recognition of such rights in national constitutions. Eighteen (32 percent) of the 59 surveyed tenure regimes enjoy constitutional protection. Of these, 14 are in Latin America (comprising 56 percent of surveyed tenure regimes in that region), three are in Asia (17 percent of the surveyed regimes in that region) and one is in Africa (6 percent of the surveyed regimes in that region).<sup>53</sup> In some cases, this recognition has happened only recently. In Bolivia, for example, the rights to land of indigenous and peasant communities were recognized in the 2009 Constitution, and, in Kenya, community lands are recognized in the 2010 Constitution. In Nepal, there is increasing pressure on the Constituent Assembly to recognize communities' collective ownership of their forests in constitutional reforms.

**TABLE 1:** Typology of instruments used to recognize or allocate rights, with examples

	Country	Regime	Description
<b>Land Titles</b>	<b>Bolivia</b>	Communal Property	Communal Properties are properties collectively entitled to peasant communities and ex-haciendas that constitute the source of subsistence for their owners. They are inalienable, indivisible, irreversible, collective, cannot be used as collateral and are free from taxes (Art. 41(6), Law No. 1.715/1996).
	<b>Republic of the Congo</b>	Indigenous Populations' Land	This regime formalizes Indigenous People's customary tenure of forestland and their use of the resources therein. Pre-existing land tenure is recognized even in the absence of land title (Art. 31-42, Act No. 5/2011).
	<b>Mexico</b>	Ejidos Located on Forest Land	Ejidos are indigenous forms of social organization and property rights recognized by the State.
<b>Management Conventions/ Concessions/ Licenses</b>	<b>Guatemala</b>	Community Concessions	A forest concession is a power granted by the State to Guatemalan citizens, individuals or legal entities that by their own risk conduct forestry activities in state-owned forests (Art. 4, Forest Act, 1996). Indigenous communities can apply for concessions once they have acquired legal status.
	<b>Indonesia</b>	Hutan Kemasyarakatan (Rural or Community Forest)	In Rural or Community Forests communities are given exploration rights in the form of a Business License to Utilize Timber Forest Products (IUPHHK), which can be issued by the Minister or Governor (Art. 90, Government Regulation No. 6/2007). An IUPHHK is a business license that allows for the utilization of forest products (timber and non-timber) within production forests when undertaking activities such as: land preparation, planting, maintenance, harvesting and marketing (Art. 1(15), Government Regulation No. 6/2007). Exploitation rights cover area arrangement, formulation of a Management Plan and the utilization and rehabilitation of forests (Art. 87, Regulation No. 6/2007).
	<b>Mozambique</b>	Forest Concessions to Communities	Forest Concessions are 50-year contracts carried out by individuals, corporations, and local communities in productive forests and multiple-use forests, for the purpose of supplying the processing or fuel industries in accordance with an approved Management Plan (Art. 16, Forestry and Wildlife Act, 1999).
	<b>Nepal</b>	Community Leasehold Forest Granted to Communities	"Leasehold Forest means a National Forest handed over as a lease... to any institution established under prevailing laws, industry based on Forest Products or community" (Art. 2, Forest Act No. 2049/1993).
<b>Permission to stay in conservation areas</b>	<b>Brazil</b>	Extractive Reserve (RESEX)	RESEX are nature reserve areas within the public domain in which traditional extractive populations can carry out subsistence activities. These populations are permitted to engage in extractive activities and may also farm and graze small animals.
	<b>Cambodia</b>	Community Protected Areas	Community Protected Areas are part of the Sustainable Use Zone of a protected area allocated to communities residing within or adjacent to that protected area (Art. 25, Protected Area Law, 2008). Inside these areas communities have the right of access based on traditional uses and local customs, beliefs, and religions (Art. 22, Protected Area Law, 2008).
	<b>Gabon</b>	Contract for the Management of National Park Land*	The Contract for the Management of National Park Land is drafted by "the manager of a park and a rural village community in the park's peripheral area, and establishes the role of these communities in the conservation of the biological diversity of the park or its peripheral area, while promoting economic benefits for these communities" (Art. 3, Law No. 003/2007).
	<b>Kenya</b>	Community Permission	When a community is granted permission to participate in the conservation and management of a State Forest or Local Authority Forest, its rights are regulated by a management agreement between the Director of the Kenya Forest Service (KFS) and the Community Association.

\* There is no legal document determining how the Contract for the Management of National Park Land must be implemented. As a consequence, the rights under this tenure regime cannot be implemented in practice.

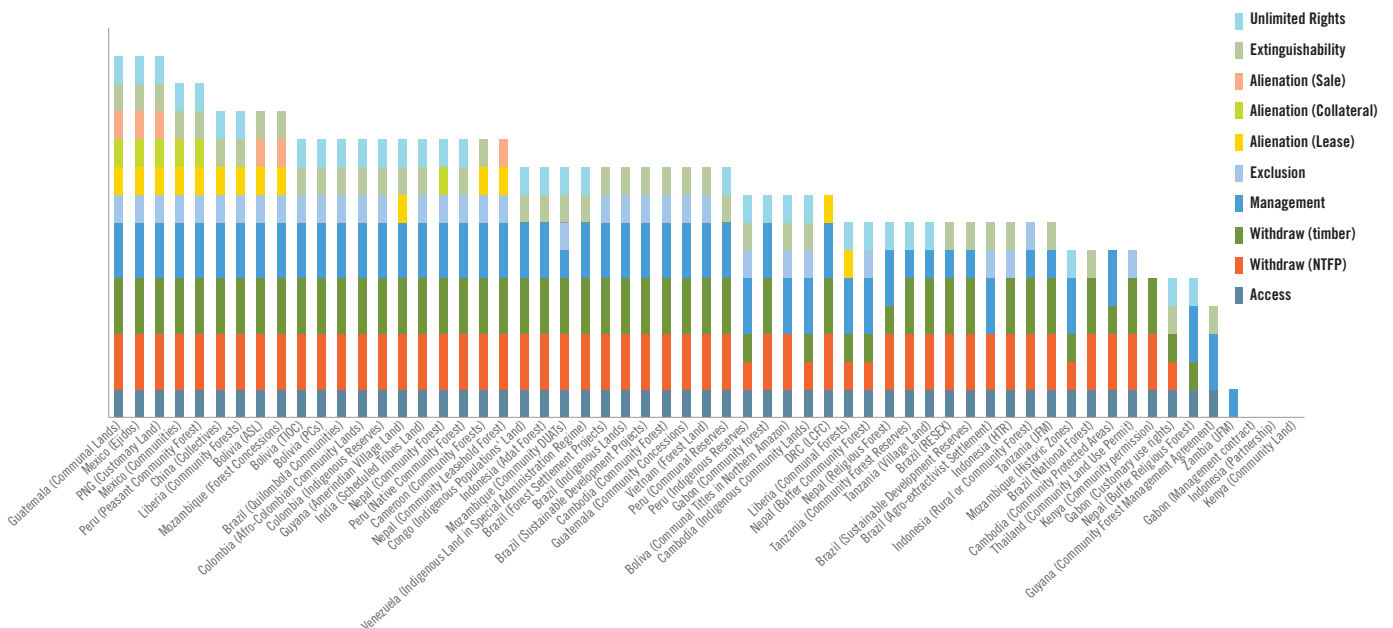
# FINDINGS

## Applying the expanded bundle of rights framework

Although governments have increasingly established or recognized the rights of Indigenous Peoples and communities to forest resources in their national laws, 56 of 59 (95 percent) of the surveyed regimes limit community rights to forest resources (Figure 4).<sup>54</sup> They do so by not recognizing one or more of the rights within the extended bundle of rights. The rights most commonly denied are the rights of exclusion and alienation: 36 percent (21 of 59) of the surveyed regimes do not recognize the rights of Indigenous Peoples and communities to exclude others from their forest lands, and 66 percent (39 of 59) forbid any right to alienate land or rights (through lease, use as collateral, or sale).

The full set of analysis is found in Annex 3.

**FIGURE 4:** The set of recognized rights in each regime analyzed in this study



Source: Forest tenure database. See [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata).

## 4.1 Access Rights

**TABLE 2: Data Snapshot: Access Rights**

	Global	Latin America	Asia	Africa
Yes	55	25	16	14
No	1	0	0	1
To be determined*	2	0	0	2
Case by case**	1	0	1	0
<b>Total</b>	<b>59</b>	<b>25</b>	<b>17</b>	<b>17</b>

\* Regimes established by constitution or law, but lacking subsequent law or regulations defining the extent of the rights.

\*\* Extent of rights defined on a case by case basis through specific agreements.

Of the surveyed regimes, 93 percent (55 of 59) recognize the general right of communities to access the forest. The only regime that does not provide access rights is the Joint Forest Management regime in Zambia. In that case, a management authority (a body comprising community members, government representatives, and others) has the power to decide who within a given community may access the forest. In the case of *Kemitraan* (Partnership) agreements in Indonesia, access is granted on a case by case basis, and access rights are yet to be fully defined in Kenya's Community Forests and Gabon's Contracts for the Management of National Park Land.

## 4.2 Withdrawal Rights

**TABLE 3: Data Snapshot: Withdrawal Rights**

NTFPs		Timber	
No	1	No	1
Yes—Subsistence purpose	6	Yes—Subsistence purpose	9
Yes—Commercial purpose	47	Yes—Commercial purpose	43
Case by case*	3	Case by case*	3
To be determined***	2	To be determined***	2
Not Available***	0	Not available***	1
<b>Total</b>	<b>59</b>	<b>Total</b>	<b>59</b>

\* Regimes established by constitution or law, but lacking subsequent law or regulations defining the extent of the rights.

\*\* Extent of rights defined case by case in individual agreements.

\*\*\* Information on the specific right is not available in identified laws and literature.

Having access to a resource does not ensure that a community can use it the way it chooses—88 percent (52 of 59) of the regimes recognize communities' rights to harvest some timber, but 17 percent of those (9 of 52) explicitly prohibit communities from commercializing timber resources and the remainder (43) must comply with management plans and/or licenses. In eleven of those 43 regimes, communities are not permitted to manage timber resources directly: some have a seat on a management board, and others cannot formulate their management plans independently.<sup>55</sup> Ninety percent of all surveyed regimes (53 of 59) recognize community rights to harvest NTFPs, but, of

those, 11 percent (6 of 53) restrict use to subsistence; examples of the latter include Religious Forests and Buffer Zone Religious Forests in Nepal, Zones of Historical Cultural Use and Value in Mozambique, and Indigenous Community Lands in Cambodia.

## 4.3 Management Rights

**TABLE 4:** Data Snapshot: Management Rights

	Global	Latin America	Asia	Africa
Yes–partial*	8	2	1	5
Yes	43	22	13	8
No	5	1	2	2
To be determined**	2	0	0	2
Case by case***	1	0	1	0
<b>Total</b>	<b>59</b>	<b>25</b>	<b>17</b>	<b>17</b>

\* Law guarantees a community the right to participate on the management board.

\*\* Regimes established by constitution or law, but lacking subsequent law or regulations defining the extent of the rights.

\*\*\* Extent of rights defined case by case in individual agreements.

Seventy-three percent (43 of 59) of the surveyed regimes recognize communities' rights to manage—in other words, they legally allow communities to regulate internal resource use patterns or to transform their forest resources. In another 14 percent (8 of 59), communities have indirect management rights. This is the case in the Extractive Reserves and Sustainable Development Reserves in Brazil, where community representatives are part of a management board (usually presided over by a government official) responsible for managing the resource. The right to manage is exercised within the limits of other rights and is not conditional to the right to withdraw timber resources for commercial purposes.

## 4.4 Exclusion Rights

In 36 percent of cases (21 of 59), almost half of which are in Africa, communities do not have the right to exclude others from using their forest resources.<sup>56</sup>

**TABLE 5:** Data Snapshot: Exclusion Rights

	Global	Latin America	Asia	Africa
Yes	34	18	12	4
No	21	6	5	10
To be determined*	3	0	0	3
Case by case**	1	1	0	0
<b>Total</b>	<b>59</b>	<b>25</b>	<b>17</b>	<b>17</b>

\* Regimes established by constitution or law, but lacking subsequent law or regulations defining the extent of the rights.

\*\* Extent of rights defined in a case by case basis by individual agreements.

In most of these regimes, the state retains the right to exclude, be it for conservation purposes as is the case of forest communities' rights within conservation areas in Brazil<sup>57</sup> and Community Protected Areas in Cambodia; or for other purposes, as is the case of the regimes recognizing customary rights in Gabon<sup>58</sup>, Guyana<sup>59</sup> and Indonesia<sup>60</sup>, and Indigenous Populations' Land in the Republic of Congo. The exception being the Indonesia *Kemitraan* (Partnership), the only identified regime in which communities' rights are not recognized or granted directly by the state, but rather, by a private sector actor to which the state have transferred the rights previously. In a *Kemitraan* (Partnership) agreement, those with rights to exploit forests (including business licenses holders) give local communities access to forest resources according to the directives established by the government, and as such retain the right to exclude others from the respective forest land and resources.

## 4.5 Alienation Rights

**TABLE 6: Data Snapshot: Alienation Rights**

	Lease	Collateral	Sale
Yes	14	6	6
No	40	46	48
To be determined*	2	2	2
Case by case**	1	1	1
Not available***	2	4	2
<b>Total</b>	<b>59</b>	<b>59</b>	<b>59</b>

\* Regimes established by constitution or law, but lacking subsequent law or regulations defining the extent of the rights.

\*\* Extent of rights defined in a case by case basis by individual agreements.

\*\*\* Information on the specific right is not available in identified laws and literature.

While some regimes support alienation rights, local rights are inalienable by local actors in the majority of the surveyed regimes. Only 24 percent (14 of 59) legally allow communities to lease their lands or resource rights. In some of those cases, communities can only lease under specific conditions. For example, Location-based Social Associations (ASLs) in Bolivia can only lease their rights to another ASL. Only in 10 percent (6 of 59) of the surveyed regimes are communities allowed to use their land or rights to forest resources as collateral, and only in 10 percent (6 of 59) are they allowed to sell their land or rights. Unlike other rights in the bundle, the restrictions on alienation can serve to protect the interests of Indigenous Peoples and communities. As noted above, the alienation of customary lands has often led to harmful consequences for the communities whose identity, culture and livelihoods are deeply connected to their customary lands.



## 4.6 Duration of Rights

**TABLE 7:** Data Snapshot: Durability of Rights

	Global	Latin America	Asia	Africa
Unlimited	34	16	9	9
Limited	23	9	8	6
To be determined*	2	0	0	2
<b>Total</b>	<b>59</b>	<b>25</b>	<b>17</b>	<b>17</b>

\* Regimes established by constitution or law, but lacking subsequent law or regulations defining the extent of the rights.

Indigenous Peoples' and local communities' rights can be legally recognized for a limited or unlimited period of time. As discussed above, the duration of a right directly affects the way communities decide how to use their forest resources. In 34 of the 59 surveyed regimes (58 percent), rights are recognized by law for an unlimited period, 16 in Latin America and nine each in Africa and Asia.

## 4.7 Extinguishability of Rights

**TABLE 8:** Data Snapshot: Extinguishability of Rights

	Global	Latin America	Asia	Africa
Yes	40	25	8	7
No	17	0	9	8
To be determined*	2	0	0	2
<b>Total</b>	<b>59</b>	<b>25</b>	<b>17</b>	<b>17</b>

\* Regimes established by constitution or law, but lacking subsequent law or regulations defining the extent of the rights.

In 68 percent (40 of 59) of the regimes, the law establishes due process or compensation if the state takes away community rights to the resource; 25 of these are in Latin America (100 percent of the regimes surveyed in that region), eight in Asia (47 percent of regimes in that region), and seven in Africa (41 percent of regimes in that region).

## 4.8 Uneven and limited recognition of rights

To assess the implementation of the regimes identified in this study we collected information on the area of forest under each regime. The data collection process followed the methods established by Sunderlin et al. 2008<sup>61</sup> and used official government statistics.

Figure 5 shows that the recent global trend in on the ground recognition of the forest tenure rights of Indigenous Peoples and communities has been limited largely to Latin America and a few countries in Asia. In Africa, the area under the community forest tenure regimes in this study totals 15.9 million hectares, which is about 5 percent of the forest area of the surveyed countries in that region. Community forest tenure regimes account for about one-third of the total forest area in the countries surveyed in Latin America (233 million hectares are under community forest regimes) and Asia (152 million hectares are under community forest tenure regimes).

Despite an overall increase in the recognition of the rights of Indigenous Peoples and communities to forest resources, a number of obstacles remain. In nine of the 59 surveyed regimes, a lack of implementing laws, regulations, and procedures prevents communities from enjoying, in practice, their legally recognized rights (Table 9). Six of the nine regimes are in Africa.

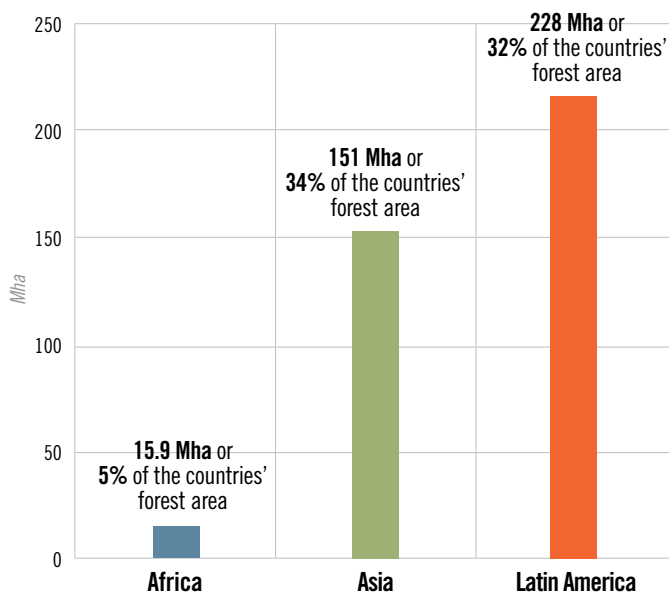
Although the legal systems of most countries recognize at least some of the rights of Indigenous Peoples and communities to forest resources, the lack of political will to apply the law, and the cumbersome bureaucratic processes required to prove eligibility to exercise those rights, prevent many communities from asserting their rights in practice. Examples of bureaucratic obstacles are

costly land delimitation processes; requirements for communities to acquire legal status; the complex legalese of applications and other documentation; the need to provide evidence of traditional use of the resource; and the short legal timeframe during which communities must comply with the complicated procedures established by law (Box 2).

Bureaucratic procedures are frequently used by those in powerful positions to stifle the exercise of rights and to create opportunities for rent-seeking. In Peru, for example, native communities have exclusive rights to use and benefit from timber and non-timber products on their lands, but obtaining the required authorization from regional authorities is complex. This creates a situation in which

*Despite an overall increase in the recognition of the rights of Indigenous Peoples and communities to forest resources, a number of obstacles remain.*

**FIGURE 5:** Area under each tenure regime in this study, by region, 2012



**TABLE 9:** Regimes lacking implementing regulations, 2012

Country	Regime	Pending Regulations
<b>Cambodia</b>	Community Protected Areas	The Ministry of Environment needs to approve guidelines on the procedure for and process of establishing Community Protected Areas. Drafts have been presented, but Ministry has not yet approved guidelines.
<b>Democratic Republic of the Congo</b>	Local Community Forest Concession (LCFC)	The Forest Code states that "the process for granting concessions to local communities will be addressed in future presidential decrees" (Art. 22, Forest Code, 2002). Drafts of the scheduled decrees that would provide the method for creating an LCFC have been presented but are yet to be approved.
<b>Gabon</b>	Contract for the Management of National Park Land	Law No. 003/2007 on National Parks created this regime in general terms without determining how the Contract for the Management of National Park Land should be implemented. No reference to the drafting of implementing regulations was found.
<b>Guyana</b>	Community Forest Management Agreement	Part 2 of the Guyanese Forest Act of 2009 states that future regulations will address matters such as: the form and content of applications, qualifications, restrictions, criteria, and conditions regarding CFMAs (Section 81, Forest Act, 2009). No reference to the drafting of implementing regulations was found.
<b>Indonesia</b>	<i>Adat</i> Forest (Customary Forest)	Both the Indonesian Constitution of 2002 and the Forest Law of 1999 recognize <i>Adat</i> Forest. However establishment of this type of forest is difficult due to a lack of specific policies and regulations. No reference to the drafting of specific policies or regulations was found.
<b>Kenya</b>	Community Land	The Kenyan Constitution of 2010 recognizes Community Land. There is no law that sets up the mechanisms by which communities can secure ownership over Community Lands. As a consequence, the rights under this tenure regime are not yet clearly defined and cannot be implemented in practice. No reference to the drafting of implementing regulations was found.
	Community Permission	Additional regulations regarding the implementation of the Forest Act of 2005 are scheduled to be enacted, including measures that enhance community participation in the conservation of forests at the local level (Section 59(2)(h), Forest Act, 2005). Although rules concerning other areas regulated by the Forest Act were approved, no reference to the drafting of rules concerning the implementation of Community Permission was found.
<b>Tanzania</b>	Joint Forest Management (JFM)	The possibility of establishing Joint Forest Management Agreements (JFMA) was created by the Forest Act of 2002. However, the government has not yet approved JFMA Guidelines mainly due a lack of consensus about the cost and benefits sharing mechanism. As a consequence, it is very difficult to implement a JFMA in practice. <sup>62</sup> No reference to the drafting of guidelines was found.
<b>Zambia</b>	Joint Forest Management Area (JFMA)	Zambia approved the new Forest Act No. 7 in 1999. This act regulated JFMAs and mandated the creation of a Forest Commission. The implementation of this act has been very contentious, and because the Forest Commission was never created the law is not operational. Despite this legal confusion, the JFMA Approach was piloted in Zambia under Statutory Instrument No. 47 of 2006. However, this instrument does not address cost-benefit mechanisms and therefore presents challenges for local communities looking to benefit from a JFMA.

communities, made vulnerable by their unfamiliarity with the bureaucracy, can be taken advantage of by private logging companies. Some companies, offering to help with the administrative procedures needed to obtain permits, have arrogated that permission and exploited the resources themselves. Because native communities hold the rights and obligations exclusively, the native communities may be taken to court if the companies violate the terms of the permits.<sup>63</sup>

Many governments make the recognition of property, access, management, and exclusion rights contingent on strict compliance with the requirements of management plans or licenses, which are frequently onerous to prepare and difficult for communities to follow. These management plans seldom recognize the traditional ways of managing natural resources practiced by Indigenous Peoples. In Kenya, Community Permission to participate in the conservation and management of a state forest or local-authority forest is dependent on the approval of a management plan. The slow pace of the approval process creates a bottleneck that, in practice, hinders community participation.<sup>64</sup>

## **BOX 2: CUMBERSOME BUREAUCRATIC PROCEDURES IN MOZAMBIQUE PREVENT COMMUNITIES FROM DEFENDING RIGHTS IN PRACTICE**

Even though the Mozambique Forestry and Wildlife Act, 1999, authorizes local communities to apply for forest concessions, the requirements to enter into such contracts are usually beyond the financial and technical capacities of poor rural communities. This includes the need to present:

- Six copies of a topographical map, which must include all the identifying features of the land, especially the boundaries, rivers, lagoons, roadways, paths, and populated areas.
- A descriptive report, which must include a general description of the forested areas delineated by the map, an indication of the principal species that will be subject to exploitation, reference to the quality and nature of the forest products therein, a preliminary forest inventory, mean annual volume to be exploited, the degree of industrialization and markets to be supplied, and an indication of the mechanical and industrial means to be used in the complete exploitation process and projected installations.
- A survey of all third-party rights in the area and proposals for their harmonious integration into the requested exploitation (Article 26, Forest Act Regulations, 2002).

As of 2009, no community concessions had been granted, although two applications supported by the *Associação Rural de Ajuda Mútua* have been awaiting approval since 2008.\*

\* Mackenzie, Catherine and Daniel Ribeiro. 2009. *Tristezas Tropicais: More Sad Stories from the Forests of Zambézia*. Mozambique: Amigos de Floresta and Justica Ambiental. p12, 19.

# FINDINGS

## Regional assessment of the bundle of rights

There are substantial differences in the legal traditions, cultural and economic histories, and pressures on forest resources in Latin America, Asia, and Africa. The following regional analyses provide a finer lens through which to review the study's findings.

### 5.1 Latin America

Eight Latin American countries—Bolivia, Brazil, Colombia, Guatemala, Guyana, Mexico, Peru, and Venezuela—are included in this analysis, for a total of 25 Indigenous Peoples' and community forest tenure regimes (Table 10). These countries contain approximately 94 percent of Latin America's forests.

**TABLE 10:** Tenure regimes in Latin America, and forest area under each regime, 2012

Country	Tenure Regime	Area under Regime (ha)
Bolivia	<i>Territorios Indígena Originario Campesino</i> (Original Peasant Indigenous Territories)	12,375,147 <sup>65</sup>
	<i>Propiedades Comunitarias</i> (Communal Properties)	561,002 <sup>66</sup>
	<i>Títulos Comunes para Comunidades Agro-extractivistas (Norte Amazónico)</i> (Communal Titles for Agro-extractivist Communities in the Northern Amazonian Region)	1,807,320 <sup>67</sup>
	<i>Agrupaciones Sociales del Lugar</i> (ASLs) (Location-based Social Associations)	473,155 <sup>68</sup>
Brazil	<i>Reservas Extrativistas</i> (Extractive Reserves)	13,532,581 <sup>69</sup>
	<i>Reservas de Desenvolvimento Sustentável</i> (Sustainable Development Reserves)	10,578,408 <sup>70</sup>
	<i>Florestas Nacionais</i> (National Forests)	n.d. <sup>71</sup>
	<i>Projetos de Assentamento Agro-extrativista</i> (Agro-extractivist Settlement Projects)	7,427,424 <sup>72</sup>
	<i>Projetos de Assentamento Florestal</i> (Forest Settlement Projects—unique to the Northern Region)	225,498 <sup>73</sup>
	<i>Projetos de Desenvolvimento Sustentável</i> (Sustainable Development Projects)	2,655,564 <sup>74</sup>
	<i>Territórios Quilombolas</i> (Quilombola Communities)	988,356 <sup>75</sup>
<i>Terras Indígenas</i> (Indigenous Lands)	110,579,712 <sup>76</sup>	

Country	Tenure Regime	Area under Regime (ha)
Colombia	<i>Resguardos Indígenas</i> (Indigenous Reserves)	26,485,028 <sup>77</sup>
	<i>Tierras de las Comunidades Negras</i> (Afro-Colombian Community Lands)	3,361,645 <sup>78</sup>
Guatemala	<i>Concesiones Comunitarias</i> (Community Concessions)	500,000 <sup>79</sup>
	<i>Tierras Comunales</i> (Communal Lands)	294,080 <sup>80</sup>
Guyana	Community Forest Management Agreements	0 <sup>81</sup>
	Amerindian Village Lands	2,488,000 <sup>82</sup>
Mexico	<i>Ejididos Localizados en Tierras Forestales</i> (Ejididos Located on Forest Lands)	21,470,166 <sup>83</sup>
	<i>Comunidades</i> (Communities)	
Peru	<i>Tierras de Comunidades Nativas con Aptitud Forestal</i> (Native Community Forest Lands Suitable for Forestry)	12,040,110 <sup>84</sup>
	<i>Reservas Comunales en Suelo Forestal</i> (Communal Reserves in Forest Land)	1,753,800 <sup>85</sup>
	<i>Reserva Indígenas</i> (Indigenous Reserves)	2,812,000 <sup>86</sup>
	<i>Tierras de Comunidades Campesinas con Aptitud forestal</i> (Peasant Community Forest Lands Suitable for Forestry)	746,370 <sup>87</sup>
Venezuela	<i>Tierras Indígenas en Áreas Bajo Régimen de Administración Especial</i> (Indigenous Lands in Special Administrative Regime)	n.d.
<b>TOTAL</b>		<b>232,655,366</b>

n.d. – After exhaustive research there does not appear to be data available/the data available is not specific enough/  
the tenure regime came into existence after the most recent forest area survey.

### BOX 3: DIFFERENT PEOPLE, DIFFERENT POLICIES, DIFFERENT REGIMES: THE BRAZILIAN EXAMPLE

The eight tenure regimes identified in Brazil are good examples of the varying nature of the policies behind regime creation in Latin America. The inclusion of Indigenous Lands and *Quilombola* Communities in the 1988 Federal Constitution institutionalizes the recognition of the rights of indigenous and other traditional populations. The agro-extractive, forest, and sustainable development projects were established with the aim of regularizing the land status of land occupiers and are overseen by the National Institute for Colonization and Agrarian Reform (*Instituto Nacional de Colonização e reforma Agrária*—INCRA). Additionally, the main purpose of the Extractive Reserves, Sustainable Development Reserves, and National Forests is the sustainable use of environment resources. The government body responsible for overseeing these regimes, the Chico Mendes Institute for the Conservation of Biodiversity (*Instituto Chico Mendes de Conservação da Biodiversidade*—ICMbio), is part of the Ministry of the Environment.

The environmental restrictions imposed on communities in order to use forest resources are less stringent in the areas under the oversight of INCRA than in those under the oversight of ICMbio. Despite these restrictions, sustainable-use areas establish a legal framework for a permanent community presence in conservation units that did not exist before enactment of the National Conservation Units Law, 2000.\*

\* National Conservation Units (SNUC) Law No. 9985/2000

Of the three regions surveyed, Latin America has the broadest and most complex set of systems for recognizing the tenure rights of Indigenous Peoples and communities. With the exception of Venezuela, all countries have at least two tenure regimes. The relatively high number of tenure regimes in the region may be explained by differences in the intended purposes of the policies behind their creation. Latin American regimes reflect three main initiatives: recognition of the rights to land of indigenous and other traditional populations;<sup>88</sup> agrarian reform;<sup>89</sup> and the increased participation of Indigenous Peoples and communities in the management of state forests.<sup>90</sup> Regarding the latter, Brazil and Guyana have established legal frameworks that allow Indigenous Peoples and communities to participate in the management of state forests; in the case of Guyana’s Community Forest Management Agreements, a lack of implementing regulations has prevented communities from enjoying the rights accorded to them by law.

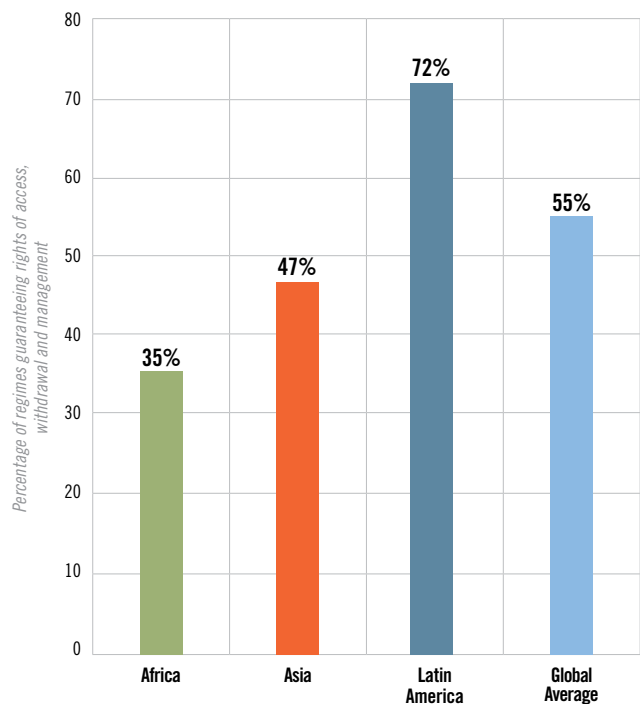
### Applying the expanded bundle of rights framework to 25 regimes in Latin America

Only two of the 25 surveyed regimes in Latin America recognize the entire extended bundle of rights. The right most commonly denied is the right to alienate. Only six of the 25 surveyed regimes allow communities to lease out their resources, four allow the use of resources as collateral, and three allow the sale of lands or rights.

Eighteen (72 percent) of the 25 surveyed regimes in Latin America allow communities to access and withdraw timber and non-timber resources for commercial purposes and to manage those resources themselves, the highest proportion of the three regions (Figure 6). In all these regimes, however, the exercise of withdrawal and management rights is limited by requirements for forest management plans and/or licenses. In many cases (e.g. all of the Brazilian tenure regimes), this means that communities need to comply with complex bureaucratic procedures and legal criteria that create barriers to communities in the practical exercise of their rights.

Fifteen of the 25 surveyed regimes include the constitutional protection of the rights of Indigenous Peoples and communities to forest resources. All 25 require the state to comply with due process and provide compensation in the event that it decides to revoke communities’ rights. Sixteen of the regimes place no time-limit on the recognition of rights.

**FIGURE 6:** Regional comparison of regimes recognizing rights access, withdrawal, and management



## 5.2 Asia

Nine Asian countries—Cambodia, China, India, Indonesia, Malaysia, Nepal, PNG, Thailand, and Viet Nam—are included in the analysis. These countries contain approximately 72 percent of Asia’s forests. Seventeen regimes were reviewed (Table 11): Nepal had the greatest number, with five, followed by Indonesia, with four.

**TABLE 11: Tenure regimes in Asia, and forest area under each regime, 2012**

Country	Tenure Regime	Area under Regime (ha)
Cambodia	Community Forests	179,375 <sup>91</sup>
	Community Protected Areas	n.d. <sup>92</sup>
	Indigenous Community Lands	n.d. <sup>93</sup>
China	Collective Ownership with Individual Property Rights to Forest Land	119,519,800 <sup>94</sup>
India	Land for Scheduled Tribes and Other Traditional Forest-dwellers	1,601,524 <sup>95</sup>
Indonesia	<i>Adat</i> Forest (Customary Law Forest)	n.d.
	<i>Hutan Kemasyarakatan</i> (Rural or Community Forest)	60,599 <sup>96</sup>
	<i>Kemitraan</i> (Partnership)	n.d. <sup>97</sup>
	<i>Hutan Tanaman Rakyat</i> (People Plantation or People Plant Forest)	39,083 <sup>98</sup>
Malaysia	None	n/a
Nepal	Community Forests	1,652,654 <sup>99</sup>
	Community Leasehold Forests Granted to Communities	38,918 <sup>100</sup>
	Religious Forests Transferred to Communities	543 <sup>101</sup>
	Buffer Zone Community Forests	n.d. <sup>102</sup>
	Buffer Zone Religious Forest Transferred to Communities	n.d. <sup>103</sup>
PNG	Common Customary Land	25,078,930 <sup>104</sup>
Thailand	Community Land Use Permits	0 <sup>105</sup>
Viet Nam	Forest Land Allocated to Communities	3,480,000 <sup>106</sup>
<b>TOTAL</b>		<b>151,651,427</b>

n.d. – After exhaustive research there was insufficient data, data were not specific enough, or the tenure regime came into existence after the most recent forest area survey.

Eight of the 17 surveyed tenure regimes in Asia were established before 2000, including two of the oldest regimes identified: that which recognizes Common Customary Land in PNG, which was established in 1975, and the collectives in China, which were first established after the communist revolution in the 1950s and codified in 1982.

Tenure reforms in two of Asia’s communist countries, China and Viet Nam, not only guarantee community rights to forest resources but increasingly encourage or allow the allocation of forest land to households. In China, independent peasant households were forced together and organized as collectives by the state. In most senses, a reform process launched in 2006 is an act of restitution, enabling households to regain their property rights. This reform is more problematic in the country’s ethnic minority areas, which have traditionally managed their forests collectively. In this sense, “China’s situation differs from global trends, as 58% of China’s forested land has been legally owned by collectives for decades, and reforms permit the breaking-up of collectively held land and



encourage private land markets.”<sup>107</sup> In Viet Nam, state management was generally the only form of forest tenure until the end of the 1980s. Local people have only been able to participate in forest management, both as individuals and as collectives (which have been legally recognized by the state), since the 1990s.<sup>108</sup>

### **Applying the expanded bundle of rights framework to 17 regimes in Asia**

Significant gains have been made in Asia towards the recognition of the rights of Indigenous Peoples and communities to forest resources. Nevertheless, some of the countries surveyed (e.g. China and Indonesia) do not recognize Indigenous Peoples in law.

All but one of the surveyed regimes in Asia recognize the right of Indigenous Peoples or communities to access forest areas. The exception is the *Kemitraan* (Partnership) regime in Indonesia, under which the extent of community rights is determined on a case by case basis according to agreements established between local communities and those who have the right to exploit the forest resources of a particular forest area.

In Asia, 16 of the 17 surveyed regimes allow communities to exploit some timber resources, provided they comply with management plans and/or licensing procedures. Nevertheless, five of those 16 regimes grant communities the right to use timber resources strictly for subsistence needs; they are Cambodia’s Community Protected Areas and Indigenous Community Lands; and Nepal’s Religious Forests, Religious Buffer Zones Transferred to Communities, and Buffer Zone Community Forests.

Thirteen of the 17 surveyed regimes in Asia recognize communities’ rights to make decisions about timber resource management, although in five of those cases the communities only have the right to regulate internal use patterns and transform timber for subsistence purposes.

In 12 of the 17 regimes, communities can exclude others from using their forest resources. Only in three of the 17 regimes do communities have the right to lease (China, PNG, and Community Leasehold Forest in Nepal). Even in those cases, the right to lease can only be exercised if the community complies with specific provisions. In China, for example, collective forest land not allocated to households can be contracted to non-villagers only if this is approved by two-thirds of the village and must be granted through open bidding or auction.<sup>109</sup> In only two of the 17 regimes are Indigenous Peoples and communities able to use rights as collateral<sup>110</sup> or to sell their land.<sup>111</sup>

Nine of the 17 Asian regimes recognize communities’ rights to forest resources for an unlimited period, and eight require the government to compensate a community if it decides to revoke its rights. Worthy of note is the case of Nepal, where even though some of its regimes (e.g. Community Forest and Community Leasehold Forest Granted to Communities) recognize most of the rights within the bundle, in none of the regimes is the government required to provide communities with just compensation for any rights to forest resources it chooses to revoke.

## **5.3 Africa**

Ten African countries—Cameroon, Republic of the Congo, DRC, Gabon, Kenya, Liberia, Mozambique, Nigeria, Tanzania, and Zambia—were included in the analysis. These contain approximately 53 percent of Africa’s forests. Seventeen community forest tenure regimes were reviewed, including three each in Gabon, Mozambique, and Tanzania (Table 12).

**TABLE 12: Tenure regimes in Africa, and forest area under each regime, 2012**

Country	Tenure Regime	Area under Regime (ha)
Cameroon <sup>112</sup>	<i>Forêts Communautaires</i> (Community Forests)	677,233 <sup>113</sup>
Congo	Indigenous Populations' Land	0 <sup>114</sup>
DRC	Concessions forestières Communautaires (Local Community Forest Concessions)	0 <sup>115</sup>
Gabon	Forêts Communautaires (Community Forests)	0 <sup>116</sup>
	Des Droits d'Usages Coutumiers (Customary Use Rights)	8,300,000 <sup>117</sup>
	Contrat de Gestion de Terroir Aux Parcs Nationaux (Management Contract with Local National Parks Administration)	0 <sup>118</sup>
Kenya	Community Lands	0 <sup>119</sup>
	Community Permission to Participate in the Conservation and Management of a State Forest or Local Authority Forest	46,316 <sup>120</sup>
Liberia	Communal Forests	n.d.
	Community Forests	10,001 <sup>121</sup>
Mozambique	Zones of Historical and Cultural Use and Value	n.d.
	Community DUATS Within Multiple-use Areas	4,642,520 <sup>122</sup>
	Forest Concessions to Communities	0 <sup>123</sup>
Nigeria	None	n/a
Tanzania	Village Land Forest Reserves	456,397 <sup>124</sup>
	Community Forest Reserves	n.d.
	Joint Forest Management	1,770,000 <sup>125</sup>
Zambia	Joint Forest Management Areas	0 <sup>126</sup>
<b>TOTAL</b>		<b>15,902,467</b>

n.d. – After exhaustive research there was insufficient data, data were not specific enough, or the tenure regime came into existence after the most recent forest area survey.

With the exception of Nigeria, all African countries have national laws recognizing some community rights to forest resources. In Nigeria, although there is no national legal framework for the recognition of community rights to forest resources, the topic is under discussion. The Nigerian federal government approved a forest policy in 2006 that outlines the basic guidelines for state regulations and recognizes the role of communities in forest management. It states that to implement the policy, the government must develop a supportive legal basis, including a National Forestry Act, but this has not yet been done. The Republic of the Congo is the only African country in this study with a specific law designed to legally recognize rights of Indigenous Populations.<sup>127</sup>

In the case of Cameroon and DRC, the general rights of access and use to forest resources provided in the Forest Code and the Constitution, respectively, were not analyzed in this study as we concluded that those rights are applicable for individuals and not specifically for communities or Indigenous Peoples.

In general, countries in Africa have taken longer than Latin American and Asian countries to begin to recognize the rights of Indigenous Peoples and communities to forest lands and resources. With the exception of Cameroon, which established Community Forests in 1994, and Mozambique, which created its Zones of Historical Cultural Use and Value and Forest Concessions to Communities in 1999, all countries approved their community forest tenure regimes after 2000.<sup>128</sup>

In some of the African countries in our sample, the occurrence of political turmoil and civil war throughout the 1990s may help to explain why rights recognition in Africa has lagged behind. For

**TABLE 13: Laws on the books but not on the ground**

Country	Regime	Year of regime's creation	Legal instrument creating regime	What is missing?
<b>DRC</b>	Local Community Forest Concessions	2002	Forest Code of the Democratic Republic of Congo Law No. 011/2002	Definition of process for granting Local Community Forest Concessions
<b>Gabon</b>	Contracts for the Management of National Park Land	2007	Law No. 003/August 27, 2007, on National Parks	Definition of process for establishing contracts for the management of national park land
<b>Kenya</b>	Community Lands	2010	Kenyan Constitution (2010)	Definition of rights of communities and mechanisms by which they can secure ownership of Community Lands
	Community Permissions	2007	Forest Act, 2005	Definition of mechanisms by which communities can be granted permission to participate in the conservation and management of a state forest or local-authority forest
<b>Tanzania</b>	Joint Forest Management Agreements	2002	Forest Act, 2002	Definition of mechanisms by which communities can participate in JFMAs
<b>Zambia</b>	Joint Forest Management Areas	1999 (2006)	Forest Act No. 7/1999 (Non-operational/ Local Forest (Control and Management) Regulations, Statutory Instrument No. 47/2006	Creation of the Forest Commission, the responsible government body for jointly managing forests with communities according to Forest Act No. 7/1999

example, significant civil conflicts disrupted governance and economic development initiatives in Republic of the Congo between 1997 and 1999, in DRC between 1996 and 2003,<sup>129</sup> and until 2003 in Liberia (Box 4). In several countries (e.g. Mozambique, Liberia, and DRC), legislation intended to recognize rights was introduced during peace processes following war.

Although some African countries have established laws recognizing the rights of communities to forest resources since 2000, continued political commitment is required if communities are to realize those rights in practice. In six of the 17 surveyed regimes in Africa (Table 13), rights cannot be implemented due to a lack of subsequent regulations to define those rights and the processes by which they are to be recognized in practice.

### **BOX 4: COMMUNITY RIGHTS RECOGNITION IN LIBERIA'S PEACE CONSOLIDATION**

In Liberia, forest resource use directly affected and exacerbated the development of internal conflicts because the former dictator, Charles Taylor, used revenue from timber to maintain control over the country. To help cut off such revenue and therefore access to and procurement of arms, and to weaken Taylor's regime, the United Nations imposed sanctions on Liberia prohibiting its member countries from trading in timber (and diamonds). Eventually, the Taylor government was removed and a free election was held in 2005. Since then, the country's forest sector has undergone several reforms, including the approval of the National Forest Reform Law, 2006, and the Community Rights Law with Respect to Forest Lands, 2009. As a result of these reforms, Liberia now has some of the most advanced forest laws and regulations in West Africa, although they remain fundamentally flawed because they do not clearly recognize community land rights or enable communities to manage and defend such rights. Implementing the laws remains a significant challenge.

In some countries, the required regulations and guidelines are under discussion. This is the case, for example, for the Local Community Forest Concessions in DRC, Joint Forest Management Agreements in Tanzania, and Joint Forest Management Areas in Zambia. The nature of mechanisms for the sharing of costs and benefits has been cited, in both Tanzania and Zambia, as one of the main reasons for disagreement between government bodies and communities when negotiating the implementation of regulations.<sup>130</sup> Both of Kenya’s surveyed regimes require further implementing regulations, and there is no publicly available draft regulation.

### Applying the expanded bundle of rights framework to 17 regimes in Africa

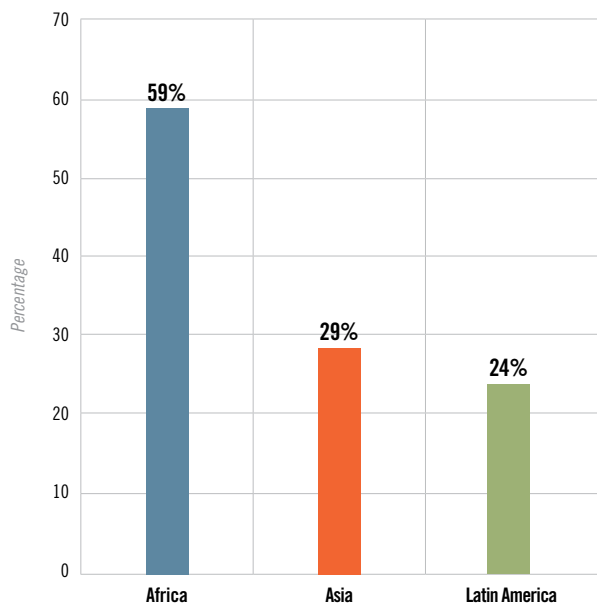
In all examined tenure regimes, the exercise of withdrawal rights and management rights is limited by forest management plans and/or licenses. In many cases, this means that communities must comply with complex bureaucratic procedures and legal criteria, barriers that often hinder the ability of those communities to exercise their rights in practice. Six of the 17 surveyed regimes in Africa recognize community rights to forest resources for only a limited period. In seven of the 17, the government is not required to compensate communities if it does decide to revoke their rights.

Only six of the 17 surveyed regimes recognize community rights of access, commercial exploitation, and management of forest resources, with the conditions set out in a management plan. Only four of the regimes recognize Indigenous Peoples’ and communities’ right to exclude,<sup>131</sup> compared with 12 of 17 in Asia and 18 of 25 in Latin America (Figure 7). In most of the surveyed regimes in Africa in which communities’ rights to exclude are counted as not recognized, communities may be able to exclude private interests but they cannot exclude the state from

intervening in order to explore, develop, or extract resources. This is the case, for example, in Indigenous Populations’ Lands in Republic of the Congo, Communal Forests in Liberia, and Joint Forest Management in Tanzania and Zambia.

Five of the 17 surveyed regimes in Africa allow communities to lease their rights to forest land or resources. For example, in DRC’s Local Community Forest Concessions and Liberia’s Community Forests, communities are allowed to enter into an agreement with third parties to transfer to them the right to exploit forest resources. However, none of the regimes allows communities to use their forest resources as collateral, and only the communities that are granted forest concessions in Mozambique are allowed to sell their forest resource rights.

**FIGURE 7:** Percent of regimes that do not recognize the right of exclusion, by region



# KEY FINDINGS

- 1** Since the 1990s, governments have increasingly recognized the rights of Indigenous Peoples and communities to forest lands and resources in national laws—86 percent (51 of 59) of the surveyed tenure regimes were established between 1992 and today.
- 2** Latin America has led the way in recognizing or establishing forest tenure regimes for Indigenous Peoples and communities with more regimes created earlier than Africa and Asia.
- 3** Twenty-five of the 27 surveyed countries have recognized one or more forms of Indigenous Peoples' and community tenure rights in their national laws. Fourteen laws explicitly identify Indigenous Peoples. About one-third (19) of the 59 regimes benefit from constitutional protection; most of which are in Latin America.
- 4** Fifty-six of the surveyed regimes (95 percent) restrict community use of forest resources by not recognizing one or more of the rights within the expanded bundle of rights proposed in this study.
- 5** Just over half of the tenure regimes (32 of 59) recognize the rights of Indigenous Peoples and communities to access, commercial exploitation, and forest resource management. But in all cases these rights are contingent on compliance with state mandated management plans and/or the stipulations of licenses.

6

Thirty-six percent (21 of 59) of the surveyed tenure regimes do not recognize the right of Indigenous Peoples and communities to exclude others from their forest lands. Sixty-six percent (39 of 59) forbid them from alienating their lands or their rights to forest resources (through lease, use as collateral, or sale).

7

In over half of the regimes (34 of 59), rights are recognized for an unlimited period. In 40 of the regimes, the government must comply with due process and provide adequate compensation should it decide to revoke a community's rights.

8

Fifty-two of the 59 regimes recognize community rights to harvest some timber, but nine of those explicitly prohibit communities from commercializing their timber resources. In all the regimes that allow commercial exploitation, communities must comply with the conditions of management plans and/or the stipulations of licenses.

9

Of the regimes that recognize the rights of communities to harvest timber, 21 percent (9 of 43) do not allow communities to manage timber resources themselves. Communities either have a seat on a board (usually presided over by a government official) for the management of the area or cannot develop a management plan by themselves.

10

Latin America has the highest percentage of regimes guaranteeing the rights of access, commercial exploitation, and forest resource management. It also provides Indigenous Peoples and communities with the highest degree of security for their rights. Nevertheless, Indigenous Peoples and communities are often prevented from realizing their rights in practice. This is often due to the complicated mandated bureaucratic procedures needed to actualize the rights established by law, and the stringent requirements of forest management plans and/or licensing procedures.

11

Asia falls somewhere in the middle on most rights issues considered in this study. There, a lower percentage of regimes than in Latin America but a higher percentage of regimes than in Africa guarantee rights to access, manage, exclude, and alienate (except the right to lease, where the average in Asia is lower than that in Africa). A relatively high percentage of regimes in Asia allow for some timber exploitation, but in 31 percent (5 of 16) of those regimes communities only have the right to use timber resources for subsistence needs. Tenure reforms in China and Viet Nam not only recognize communities' rights to forest resources but also increasingly facilitate, if not encourage, the allocation of forest land to households.

**12** Since early 2000, countries in Africa have established laws recognizing the rights of Indigenous Peoples and communities to forest resources. Compared to other regions, however, African regimes recognize fewer of the rights in the bundle. Moreover, continued political commitment is required if communities are to realize those rights in practice. In 35 percent (6 of 17) of the surveyed regimes established by national legislation, rights cannot be implemented due to a lack of supplementing regulations that clearly define the recognized rights and the processes by which such rights may be allocated in practice.

**13** A preliminary analysis undertaken as part of this study shows that less than one-third (30 percent) of the surveyed regimes are minimally consistent with the rights required by the relevant land rights articles of UNDRIP (unlimited duration of rights to access, withdrawal, exclusion).

**Although there have been significant advances since the 1990s in the recognition of the rights of Indigenous Peoples and communities to land and forests, and improvements in their ability to exercise some of those rights, major challenges remain:**

**1** There is uneven and limited application of the laws recognizing the tenure rights of Indigenous Peoples and communities. In Africa, such laws have been applied to just 5 percent of the total forest area of the surveyed countries, while in Asia and Latin America they have been applied in about one-third of the total forest area of the surveyed countries. In some areas, a lack of legal instruments to ensure sound implementation inhibits communities from realizing in practice the rights accorded to them by statutory law. This is the case for nine of the surveyed regimes (15 percent), six of which are in Africa. In many countries, limited political will to advance reforms and the recognition of rights presents a major challenge to the expansion of legal recognition of the tenure rights of Indigenous Peoples and communities.

**2** Even when implementation regulations exist, the act of putting a community tenure regime in place is often mired in bureaucratic requirements such as costly land delimitation processes; the undue requirements for communities to acquire legal status; the complex legalese of applications and other documentation; the need to provide evidence of the traditional use of forest land; and the short timeframe during which communities must comply with the complicated procedures established by law.

**3**

Once communities are able to take advantage of the community forest tenure rights guaranteed by a particular tenure regime, the continued exercise of those rights often depends on strict compliance with the requirements of management plans and license applications. Both are frequently onerous to prepare and difficult for communities to conform to. Management plans seldom recognize the traditional ways of managing natural resources practiced by Indigenous Peoples.

**4**

A greater understanding of individual right within a community is needed—especially those of women. A focus on community tenure rights can obscure internal decision-making structures that may discriminate against groups or individuals within a community.

**5**

The presumption of state or public ownership of forest land and resources still dominates many of the world's forested countries. Countering this requires more than the small-scale partitioning of forest landscapes which, despite having roots in national legal frameworks, has had little effect.



# IMPLICATIONS AND ACTIONS

SECTION

7

## Next steps for forests, people, and the global development community

**“Property is not just something we protect or invade, recognize or reject; it is something we collectively construct.”** — Joseph Singer, 2000<sup>132</sup>

**“Property rights are, by nature, social rights; they embody how we, as a society, have chosen to reward the claims of some people to finite and critical goods, and to deny the claims to the same goods by others. Try as we might to separate this right from choice, conflict, and vexing social questions, it cannot be done.”** — Laura Underkuffler-Freund, 1995<sup>133</sup>

The conventional forest ownership paradigm, which favors state ownership and management, is changing. But it is changing slowly. Despite a global trend towards the greater recognition of the forest tenure rights of Indigenous Peoples and communities, significant developments in international law and jurisprudence upholding Indigenous Peoples’ rights, and clear evidence of the environmental and social benefits of community forest management, the reality for the Indigenous Peoples and communities in the 27 countries in this study—and presumably others—still poses a challenge where rights are compromised and livelihoods and cultures are under threat. The presumption of state ownership continues to dominate, and the rights of Indigenous Peoples and communities are still highly circumscribed. While most of the surveyed regimes recognize the access rights of Indigenous Peoples and communities and some withdrawal rights for commercial and subsistence use, community forest management is usually subject to restrictions and government oversight. Although vital to the full enjoyment of forest tenure rights, the right to exclude outsiders is limited, especially in Asia and Africa. It is positive to note that two-thirds of the surveyed regimes guarantee the right to due process and compensation if the government decides to extinguish a community’s tenure rights, but the limited duration of more than half the regimes is worrisome. Regimes with limited duration raise concerns over the long-term security of those rights and the inter-generational rights that are inherent for many Indigenous Peoples.

Few of the surveyed regimes rise to the standards established by internationally recognized norms and rights regimes—particularly those that recognize the sovereignty and territorial rights of Indigenous Peoples. The limits placed on Indigenous Peoples and forest communities by the laws surveyed in this study point to the weak application and integration of international standards such as UNDRIP, the International Labour Organisation’s Convention No. 169, and other human rights conventions.

Fourteen of the 59 regimes identified were specifically established for Indigenous Peoples, but since many states do not legally recognize the existence of Indigenous Peoples, drawing a distinction among the 59 regimes is ambiguous. An important next step is to assess compliance of national legislation with international laws on human rights and Indigenous Peoples. Likewise, with the adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, governments and civil society can now assess whether national forest tenure legislation meets this new globally endorsed standard.

### Ensuring mutual support between legality initiatives and the rights agenda

The existing community tenure regimes provide useful tools to facilitate stronger community rights, improved forest management, local economic development, and projects to mitigate and adapt to climate change. Some laws recognize communities’ legal right to harvest timber and NTFPs for commercial purposes. In all such cases, these rights are conditional upon government approval of management plans. This right is critical for the legal production and trade of forest products in many of the world’s forests. The illegal trade of forest products, which the European Union’s initiative on forest law enforcement, governance, and trade (FLEGT) aims to curb, is frequently an important source of income for forest communities. The right to commercialize the resources found in community territories is perhaps the most important right for local development in forest areas. Even with such a right, regulatory barriers (e.g. harvesting quotas) provide ample room for illegality and corruption. In some cases, “regulatory takings” nullify the utility of the community tenure right.<sup>134</sup>

Definitions of legality should incorporate customary rights and not criminalize traditional uses seen as important by local people. FLEGT and VPA plans and commitments should include detailed legal analyses and ensure that progress is made toward meeting national and international standards.

### Strengthening REDD+ through substantial tenure reform

Clear and secure tenure rights are vital for reducing greenhouse gas emissions from deforestation and degradation and for the programs attempting to implement REDD+ strategies. Ninety percent of the REDD+ readiness preparation proposals prepared by developing country governments highlight insecure or unclear tenure as an obstacle to REDD+ implementation, a driver of deforestation, or something to be reformed as part of REDD+ programs. All 27 countries in this study are engaged in REDD+ projects—at the national or subnational levels—as part of the Forest Carbon Partnership Facility, the UN-REDD Programme, or on the voluntary market.<sup>135</sup> Having a clear understanding of the rights available to communities will be vital to the design of appropriate REDD+ projects and identifying where reforms are necessary to facilitate REDD+. REDD+ is touted as a means for alleviating poverty in certain areas by generating regular income for forest-dependent communities.<sup>136</sup>

Several findings emerging from our study are relevant for REDD+ practitioners:

1. The right to exclude outsiders is vital for identifying the agent of “avoided deforestation” (or restoration) and empowering communities to prevent encroachment and deforestation, but in many cases communities do not hold this right in their bundle.

2. REDD+ will likely rely heavily on contracted agreements to alter land usage. In many of the surveyed community tenure regimes, however, the communities do not have full authority to alter land usage patterns and must involve government agents on management boards or in the development of management plans.
3. The distribution of benefits to communities will rely on local institutions and governance structures. In many countries, especially in Africa, there are major obstacles to implementing community tenure regimes. This means that REDD+ will likely require the building of parallel institutions, or the actual implementation of statutory community tenure regimes. In cases where the regimes are already in place (e.g. Brazil), transaction costs are likely to be lower than in places where the rights regimes are not implementable because of missing regulations (e.g. DRC).
4. As commonly conceived, REDD+ will rely on carbon credit trading through some market or hybrid mechanism. Identifying the correct holder of the carbon credits will be difficult in areas where community tenure regimes are unimplemented, or where the rights allocated to communities are conditional and/or temporary.

National REDD+ strategies should incorporate detailed legal analyses and include plans to address gaps and extend recognition of tenure rights and other reforms necessary to enable communities to manage and benefit from their lands, forests and carbon.

### **Empowering communities to seize opportunities**

What is clear from this study is that many tenure regimes provide considerable opportunities, but are also heavily constrained. Often, communities' rights are not enforced due to striking power imbalances. The case of PNG is enlightening: the Community Lands regime, which applies to about 97 percent of the PNG territory, recognizes the rights of local communities to forests and lands. Under the law, local communities have the right to independently manage their forests, use and commercialize forest products, and lease the forests to provide a source of income. Yet the right to lease is restricted because customary landowners can only lease to the state. Thus, the government retains significant authority (*de facto* if not *de jure*) in the allocation of concessions. The power imbalance has not been corrected by the simple recognition of land rights. Much more needs to be done to inform communities of their rights, empower them to manage their forests as they wish, and exclude outsiders. When communities are empowered and benefit from technical and credit support from government programs, such as the *Ejidotes* and *Comunidades* of Mexico, they are able to produce products and incomes for their communities.

Where management plans and management boards condition community rights, the constraints might be too high for communities to realize full benefits. The costs associated with the development and endorsement of management plans, the opportunities such plans present for corruption, and the time it takes to produce them are often barriers to successful community forest management. Management plans may be appropriate regulatory instruments, but in many instances they are inconsistent with Indigenous Peoples' and communities' land rights. There is a strong need to rethink regulatory approaches in many countries towards identifying systems that promote best practices and compliance while respecting rights.

### **Taking Action: Recognizing rights and advancing development**

The recognition of the forest tenure rights of Indigenous Peoples and communities has made a substantial contribution to advancing the global sustainable development agenda. Despite the enactment of laws (of variable quality) to recognize such rights, their implementation has commonly been weak. The lack of rights on the ground, therefore, continues to constrain progress on many global development goals.

The lack of clarity around forest tenure for so many of the world's citizens, including many of its most vulnerable, is a global concern. It is all the more troubling because this lack of clarity extends to a majority of the world's forests. Raising global commitment to resolving this crisis must be a major global priority.

The global development community must recognize the urgent need for action. Without it, there is a substantial risk that civil conflicts will grow, resources will be squandered, forests will be lost or degraded, and Indigenous Peoples and other communities will continue to suffer unjust and unnecessary poverty.

To build on progress, avoid conflicts, and complete the work necessary to attain truly fair and sustainable development, global leaders should:

1. **Place tenure rights high on the global development agenda.** Advances in the rights of Indigenous Peoples and communities since 1992 have been accomplished because of the strong push by citizens and despite weak recognition of their important roles. Now with a solid empirical foundation, leaders can prioritize a commitment to recognize the rights of Indigenous Peoples and communities to forest land and resources. All countries need to determine whether their national forest and land legislation conforms to the international laws they have ratified, and the new Voluntary Guidelines on Land Tenure. Another step forward would be to include the recognition of community rights in the successor to the Millennium Development Goals.
2. **Include the issues of secure tenure and rights as underlying conditions for green growth.** Clear, secure, and just property rights are essential for sound investment in sustainable development. New standards and mechanisms to vet investments need to be established, and are in the interests of governments, communities and investors. The world should build on the commitment exhibited by the recent adoption of the Voluntary Guidelines to establish mechanisms to increase transparency of all transactions and ensure free, prior and informed consent by communities over land-based investments.
3. **Widely implement a new model of rights-based and community-led conservation.** The 1992 Earth Summit supported conventional conservation models, many of which displaced people and did not produce the desired results. A new conservation paradigm—one that is based on human rights, respects cultures, and furthers conservation—is possible.
4. **Provide support for African countries to advance significantly in recognizing community tenure rights.** The recognition and clarification of community land rights requires tremendous new political will and investment in Africa. African countries can highlight the legislative progress they have made to recognize community tenure rights and the emerging and donor economies should dedicate more energy and financial support to help Africa address its challenge—with much greater urgency.
5. **Recognize that laws on the books are not enough.** The massive legislative progress since 1992 is an essential first step towards securing forest tenure rights. Governments must now make firm commitments to implement the laws on their books that recognize and protect the tenure rights of Indigenous Peoples and communities, enact new legislation where necessary to complete the task of reforming forest tenure and regulatory frameworks, and empower communities to take full advantage of their rights to use and benefit from their lands.
6. **Seize new opportunities to secure rights.** The task ahead is large. There are many other global priorities, and the amount of public funding immediately available is limited. Innovative private—public partnerships to finance forest tenure reform need to be established. Many in the private sector now recognize that insecure forest tenure rights pose substantial risks, both financial and in terms of company reputation. It is time to look beyond the conventional forms of ODA to leverage greater commitment and financial support from the new major investors in forest areas—the agribusiness, extractive and infrastructure sectors. The development of mechanisms to channel private-sector support for implementing widespread forest tenure reform would have a transformative effect in many countries—turning the tide and helping us finally achieve the goals of sustainable development.

## Data Collection

The data was collected in two phases. The first phase was a desk study during which a review of the academic literature and relevant legislation for each country was conducted in order to identify community tenure regimes and the rights held by communities to forest resources within these regimes.<sup>137</sup>

During the second phase the preliminary data regarding each country was submitted to at least two people with relevant expertise, who verified its accuracy, provided feedback, and suggested further information where it was needed.<sup>138</sup>

This verification guaranteed that the data was as complete as possible and that it was based on the most up-to-date laws and regulations. The feedback and comments from local experts also helped us to better understand the historical context and current debates regarding each of the identified tenure regimes.

Collecting the necessary data for this study was quite challenging. Due to the wide geographic scope of the study, obtaining relevant and up-to-date laws and regulations was not easy. Documentation was not always available online, especially concerning African and Asian countries, and so the assistance of those with regional expertise and connections, country-specific experience, and local knowledge was necessary. In many cases, these contacts were able to provide the documentation and advice that made this study possible. Although the Rights and Resources Initiative maintains a thorough network of contacts and collaborators located in countries all over the world, finding contacts with suitable expertise who were willing to review the preliminary data regarding each country was more complex and time consuming than was initially foreseen. The good will and help of public officials, academics, lawyers, and tenure experts around the world allowed us to overcome these challenges and provided sound legal analysis based on the most current conditions in each of the countries studied.

## Data Comparison

Data was compared at the tenure regime level and not at the country level. The reason for this is that in most of the countries considered in this study more than one tenure regime was identified, many of which recognize different rights and often do so for different groups or populations. For example, in Brazil, a total of eight tenure regimes were identified. These regimes vary greatly in their scope, rights accorded, and demographics included. Considering the diversity of regimes and rights evaluated, creating a country index aggregating the data per country would be very complex and might obfuscate the important differences that were found to exist between the rights held by different groups of Indigenous Peoples and communities in each of the individual tenure regimes.

## From Exclusion to What Rights?

### Reconciling Methodological Changes and Data Discrepancies

RRI has developed a database for monitoring the statutory distribution of forest tenure rights over time (in millions of hectares) in approximately 45 forested countries covering more than 90% of the world's forests, which we continue to update regularly. This database considers four tenure categories: a) public lands administered by government, b) public lands designated for use by communities and indigenous peoples, c) private lands owned by communities or indigenous peoples, and d) private lands owned by individuals or firms. The present legal analysis complements this tenure distribution data by clarifying what legal rights are associated with both categories dealing with Indigenous Peoples and communities (public lands designated for use by communities and Indigenous Peoples and private lands owned by communities or Indigenous Peoples).

The analysis identifies the tenure regimes which designate public land for use by Indigenous Peoples and communities or regimes which recognize their ownership of private lands in 30 of the world's most forested countries. Understanding these tenure regimes allows us to clarify how communities exercise property rights in each of these tenure categories. For example, while in some tenure regimes Indigenous Peoples and communities have a title to their land and are allowed to commercialize and manage the forest resources therein, in others, these communities are only allowed to access a forest area and use and manage resources for their subsistence. In both cases forestland is either designated for use or owned by communities and/or Indigenous Peoples.

## Annex 2: List of legislation consulted

List of Legislation Consulted		
Country	Legal Instruments	Year Enacted (Revised/Amended)
Bolivia	Constitución Política del Estado de Bolivia de 2009	2009
	Ley Forestal No. 1700 – Ley de 12 de julio de 1996	1996
	Ley No. 1.715 del Servicio Nacional de Reforma Agraria de 1996	1997
	Ley No. 3545 – Ley de 28 de noviembre de 2006 – Modificación de la Ley No. 1715 Reconducción de la Reforma Agraria	2006
	Decreto Supremo No. 29.215 de 2 de agosto de 2007 – Reglamento de la Ley No. 1.715 del Servicio Nacional de Reforma Agraria	2007
	Decreto Superior No. 24453 de 1996 – Reglamento de la Ley Forestal No. 1700	1996
	Decreto Supremo No. 27.572 de 17 de Junio de 2004	2004
	Decreto Supremo No. 0727 de 2010	2010
Brazil	Constituição da República Federativa do Brasil de 1988	1988
	Lei No. 4.504 de 30 de novembro de 1964	1964
	Lei No. 6.001 de 19 de dezembro de 1973 – Estatuto do Índio	1973
	Lei No. 8629 de 25 de fevereiro de 1993	1993
	Lei No. 9.985 de 18 de julho de 2000	2000
	Lei No. 11284 de 2 de março de 2006	2006
	Decreto No. 1.775 de 8 de janeiro de 1996	1996
	Decreto Lei No. 59.428 de 27 de outubro de 1966	1966
	Decreto Lei No. 271 de 28 de fevereiro de 1967	1967
	Decreto No. 4340 de 22 de agosto de 2002	2002
	Decreto No 4.887 de 20 de novembro de 2003.	2003
	Decreto No. 6063 de 20 de março de 2007	2007
	Instrução Normativa INCRA No. 15 de 30 de março de 2004	2004
	Instrução Normativa ICMBio No. 3 de 2 de setembro de 2009	2009
	Instrução Normativa INCRA No. 56 de 7 de outubro de 2009	2009
	Instrução Normativa INCRA No. 65 de 27 de dezembro de 2010	2010
	Portaria INCRA No. 268 de 23 de outubro de 1996;	1996
	Portaria INCRA No. 269 de 23 de outubro de 1996	1996
Portaria INCRA No. 477 de 4 de novembro de 1999	1999	
Portaria INCRA No. 1.141 de 19 de dezembro de 2003	2003	
Cambodia	Law on Forestry of 2002 (NS/RKM/0802/016)	2002
	Land Law of 2001 (NS/RKM/0801/14)	2001
	Protected Area Law of 2007 (No. NS/RKM/0208/007)	2008
	Sub-Decree on Community Forestry Management of 2003	2003
	Sub-Decree on Procedures of Registration of Land of Indigenous Communities of 2009 (No. 83 ANK)	2009
Cameroon	Law No. 94/01 of January 20, 1994 on Forestry, Wildlife and Fisheries (1994 Forestry Law)	1994
	Decree 95/531/PM of 23 August 1995	1995
	Decree No. 95/466/PM of 20 July 1995	1995

### List of Legislation Consulted

Country	Legal Instruments	Year Enacted (Revised/Amended)
China	The People's Republic of China Constitution	1982 (2004)
	Land Reform Law of the People's Republic of China	1950
	The Forest Law of the People's Republic of China	1984 (1998)
	Law of the People's Republic of China on Land Contract in Rural Areas	2002
	Land Management Law of the People's Republic of China	2002
	Property Law of the People's Republic of China	2007
	Guaranty Law of the People's Republic of China	1995
Colombia	Constitución Política de la República de Colombia de 1991	1991 (2005)
	Ley 21 de 1991	1991
	Ley 70 de 1993	1993
	Ley 99 de 1993	1993
	Ley 160 de 1994	1994
	Decreto 2164 – Reglamento de Tierras para Indígenas	1995
	Decreto 1745 de 1995 – Propiedad Colectiva de las Tierras de las Comunidades Negras	1995
	Decreto 1791 de 1996 – Régimen de aprovechamiento forestal	1996
Republic of the Congo	Loi No. 5-2011 portant la promotion et protection des droits des populations autochtones	2011
	Loi No. 16-2000 du 20 novembre 2000 – Code forestier	2000
	Décret No. 2002-437 du 31 décembre 2002	2002
Democratic Republic of the Congo	Loi No. 73-021 du juillet 1973 Portant Régime Général des Biens, Régime Foncier et Immobilier et Régime des Sûretés Telle que Modifiée et Complétée par la Loi No. 80-008 du 18 juillet 1980.	1973 (1980)
	Loi No. 011/2002 du 29 août 2002 Portant Code Forestier en République Démocratique du Congo.	2002
	Arrêté 28/08	2008
	Arrêté 24/08 "Fixant la procédure d'attribution des concessions forestières"	2008
	Arrêté 13/2010 "Modèle d'accord constituant la clause sociale du cahier de charge du contrat de concession forestière"	2010
Gabon	Loi No. 16/01 du 31 décembre 2001, portant le code forestier de la République Gabonaise	2001
	Loi No. 003/2007 du 27 août 2007, relative aux parcs nationaux	2007
	Décret No. 001028/PR/MEFEPEPN du 01/12/04 fixant les conditions de création des forêts communautaires	2004
	Décret No. 000692/PR/MEFEPEPN du 2004 fixant les conditions d'exercice des droits d'usage coutumiers en matière de forêt, de faune, de chasse et de pêche	2004
	Ordonnance No. 011/PR/2008 modifiant et complétant certaines dispositions de la loi 16/01 du 31 Décembre 2001 portant code forestier en République gabonaise	2008
Guatemala	Constitución Política de Guatemala de 1985	1985
	Ley de Titulación Supletoria, Decreto 49-79	1979 (2005)
	Ley de Áreas Protegidas, Decreto 4-89	1989
	Ley Forestal de 1996	1996
	Ley del Chicle, Decreto 99-96	1996
	Ley de Registro Catastral de 2005	2005
	Reglamento de la Ley Forestal, Resolución 4/23/97	1997
	Reglamento del Registro Nacional Forestal Resolución 1/43/05	2005
	Reglamento Especifico Para Reconocimiento Y Declaración De Tierras Comunales. Resolución Número 123-001-2009	2009



### List of Legislation Consulted

Country	Legal Instruments	Year Enacted (Revised/Amended)
Guyana	Constitution of the Co-operative Republic of Guyana, Act 1980	1980 (1996)
	State Lands Act, 1910	1910 (1997)
	Forest Act (Chapter 67:01)	1953 (1996)
	Forest Regulations (Chapter 67:01)	1953 (1972)
	Mining Act (Chapter 65:01)	1989
	Forests Act, 2009	2010
	Amerindian Act, 2006	2010
	Protected Area Bill, 2011	2011
India	The Indian Forest Act, 1927	1927
	The Forest (Conservation) Act, 1980	1980
	National Forest Policy, 1988	1988
	Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006	2007
	Ministry of Environment and Forests, The Circular Concerning Joint Forest Management, No. 6-21/89-P.P	1990
	Ministry of Environment and Forests, Circular, F. No. 11-9/1998-FC (pt)	2009
Indonesia	Constitution of Indonesia	1945 (2002)
	Basic Forestry Law No. 41, 1999	1999
	Government Regulation No. 6, 2007	2007
	Government Regulation No.3, 2008 – The amendment to government regulations No. 6, 2007	2008
	The Ministry of Forestry Regulation No. 23, 2007	2007
Kenya	The Constitution of Kenya, 2010	2010
	The Forests Act, 2005	2007
Liberia	The National Forestry Reform Law of 2006	2006
	The Community Rights Law of 2009 with respect to Forest Lands	2009
	Regulations to the Community Rights Law of 2009 with Respect to Forest Lands	2011
Malaysia	Malaysian Federal Constitution of 1957	1957
	Aboriginal Peoples Act 1954 (Act No. 134)	1954 (1974)
	National Forestry Act 1984 (Act No. 313)	1984 (1993)
	Sabah's Land Ordinance (Cap. 68)	1975 (1997)
	Forest Enactment, 1968 (Sabah No. 2 of 1968)	1968 (1997)
	Forests Ordinance [Cap. 126 (1958 Ed.)]	1958 (2003)
	Sarawak Land Code	1958 (2000)
	National Forestry Act 1984 (Act No. 313)	1984 (1993)
	Koperasi Kijang Mas v. Kerajaan Negeri Perak [1991] 1 CLJ	1991
	Adong Kuwau & Ors v. Kerajaan Negeri Johor & Anor, 1 MLJ 418 (1997)	1997
	Kerajaan Negeri Johor v Adong bin Kuwau [1998] 2 MLJ 158	1998
	Sagong bin Tasi v Kerajaan Negeri Selangor (2002) 2 MLJ 591	2002
	Kerajaan Negeri Selangor v Sagong bin Tasi [2005] 6 MLJ 289	2005

### List of Legislation Consulted

Country	Legal Instruments	Year Enacted (Revised/Amended)
Mexico	Constitución Política de los Estados Unidos Mexicanos del 1917	1917 (2010)
	Ley de Desarrollo Sustentable	2003 (2008)
	Ley Agraria	1992 (2008)
Nepal	Forest Act, 2049, 1993	1995 (1999)
	National Parks and Wildlife Conservation Act, 1973	1973 (1993)
	Forest Regulation, 2051, 1995	1995
	Buffer Zone Management Regulation, 2052, 1996	1996
	Buffer Zone Management Guideline (2056-5-3)	1999
Nigeria	Land Use Act, 1978	1978 (1990)
	National Forest Policy, 2006	2006
	Decree No. 46 – National Park Service Decree, 1999	1999
	Cross River State Forest Commission Bill, 2010	2010
Mozambique	Forestry and Wildlife Act	1999
	Forestry Act Regulations	2002
	Land Law of 2007	2007
Papua New Guinea	Constitution of the Independent State of Papua New Guinea (1975)	1975 (1991)
	Forestry Act 1991	1992 (2005)
	Land Act 1996	1996
	The 1996 Forestry Regulations	1996
Peru	Constitución Política del Peru, 1993	1993
	Decreto Ley No. 22175, 1978 – Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y de Ceja de Selva	1978
	Ley No. 24656, 1987 – Ley General de Comunidades Campesinas	1987
	Ley No. 26505, 1995 – Ley de la Inversión Privada en el Desarrollo de las Actividades Económicas en las Tierras del Territorio Nacional y de las Comunidades Campesinas y Nativas	1995
	Ley No. 26821, 1997 – Ley Orgánica para el Aprovechamiento de los Recursos Naturales	1997
	Ley No. 26834, 1997 – Ley de Areas Naturales Protegidas	1997
	Ley No. 27308, 2000 – Ley Forestal y de Fauna Silvestre	2000
	Ley No. 27867, 2002 – Ley Orgánica de Gobiernos Regionales	2002 (2003)
	Ley No. 28736, 2006 – Ley para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial	2006
	Decreto Supremo AG No. 014/2001 – Reglamento de la Ley Forestal y de Fauna Silvestre	2001
	Decreto Supremo AG No. 038/2001- Reglamento de la Ley de Áreas Naturales Protegidas	2001
	Decreto Supremo MIMDES No. 008/2007	2007
	Resolución de Intendencia IRENA-IANP No. 019/2005 – Régimen Especial de administración de Reservas Comunales	2005

List of Legislation Consulted		
Country	Legal Instruments	Year Enacted (Revised/Amended)
Tanzania	The Forest Act, 2002	2004
	The Land Act, 1999	2001
	The Village Land Act, 1999	2001
	Local Government District Authorities Act No 7 of 1982 (as amended in 2000).	1982 (2000)
Thailand	Arts 66-67, Constitution of The Kingdom of Thailand	2007
	Forest Act (1941)	1942
	National Park Act, B.E. 2504 (1961)	1961
	National Reserved Forest Act, B.E. 2507 (1964)	1964
	Wildlife Preservation and Protection Act, B.E. 2535 (1992)	1992
	Commerical Forest Plantation Act, B.E. 2535 (1992)	1992
	Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds	2010
Venezuela	Constitución de la República Bolivariana de Venezuela de 1999, Art. 119	1999
	Ley Orgánica de Pueblos y Comunidades Indigenas	2002
	Ley de Bosques y Gestión Forestal (Decreto No. 6.070)	2008
Viet Nam	Law on Land of 2003	2003 (2004)
	Law on Forest Protection and Development of 2004	2005
	Decree No. 181-2004-ND-CP, providing for implementation of Law on Land	2004
	Decree No. 23/2006, on the Implementation of the Law on Forest Protection And Development	2006
Zambia	Forest Act No 39 of 1973	1973
	The Lands Act of 1995	1995
	Local Forest (Control and Management) Regulations, Statutory Instrument No. 47, 2006	2006

## Annex 3: Full table of regimes analyzed

Country	Tenure Regime	Year of Regime's Creation	Legislation confers rights to	
Bolivia	Territorio Indígena Originario Campesino (Original Peasant Indigenous Territory)	1996 (2009)	Indigenous communities and villages or original inhabitants with legal recognition or who are in the process of acquiring legal recognition	
	Propiedades Comunitarias (Communal Property)	1996 (2009)	Peasant communities, settlers, indigenous communities and villages and original dwellers.	
	Títulos Comunes para Comunidades Agro-extractivistas (Norte Amazónico) (Communal Titles for Agricultural-Extrivist Communities in the Northern Amazonian Region)	2004	Individual persons or collectivities who entered peacefully into an area and carried out activities to benefit from natural non-timber forests resources for at least 5 years before the enactment of the Forestry Law	
	Agrupaciones Sociales del Lugar (ASL) (Location-Based Social Associations)	1996	Location-based communities organized by any of the legal recognition clauses described in the Law N° 1551 (April 20, 1994)	
Brazil	Reserva Extrativista (RESEX)(Extractive Reserve)	2000	Traditional populations represented by a legal association registered with ICMBio	
	Reservas de Desenvolvimento Sustentável (Sustainable Development Reserves)	2000	Traditional populations represented by a legal association registered with ICMBio	
	Florestas Nacionais (FLONA)(National Forests)	2000	Traditional populations living in a FLONA at the time of its creation	
	Projeto de Assentamento Agro-Extrativista (PAE) (Agro-Extrivist Settlement Project)	1996	Community of traditional population families that occupy the forestry area; in common property regime represented by an association, condominium or cooperative	
	Projetos de Assentamento Florestal (Forest Settlement Projects (Unique to the northern region)	2003	Communities engaged in sustainable family forestry with a common property regime represented by an association, condominium or cooperative	
	Projeto de Desenvolvimento Sustentável (Sustainable Development Projects)	1999	Populations subsisting on extractive activities, family farming and other low-impact environmental activities in a common property regime represented by an association, condominium or cooperative	
	Territórios Quilombolas (Quilombola Communities)	1988	Quilombo communities represented by associations constituted legally	
	Terras Indígenas (Indigenous Lands)	1988	Indigenous or aborigines people, represented by their own forms	
Cambodia	Community Forests	2002	Communities living within or near the forest area of a Permanent Forest Reserve	
	Community Protected Areas	2008	Communities residing within or adjacent to a Protected Area	
	Indigenous Community Lands	2001	Indigenous Communities established as a legal entity	
Cameroon	Community Forests (Forets Communautaires)	1994	A community established in a legal form and represented by a management officer	
China	Collective Ownership with Individual Property Rights to Forestland	1982	All members of the community in which the collective is formed	
Colombia	Resguardos Indígenas (Indigenous Reserves)	1991	Indigenous communities represented by a legal authority	
	Tierras de las Comunidades Negras (Afro-Colombian Community Lands)	1991	Afro-Colombian Communities constituted as a Community Council	
Rep. of the Congo	Indigenous Populations' Land	2011	Indigenous Populations	
DRC	Local Community Forest Concessions (LCFC) (Concessions Forestières Communautaires)	2002	Local Communities	
Gabon	Forêts Communautaires (Community Forests)	2001	Local or rural village communities who are part of a recognized association	
	Des Droits d'Usages Coutumiers (Customary Use Rights)	2001	Rural village communities living according to their ancestral traditions	
	Contrat de Gestion de Terroir aux Parcs Nationaux (Management Contract with Local National Parks Administration)	2007	To be determined	
Guatemala	Concesiones Comunitarias (Community Concessions)	1996	Organized communities with legal status	
	Tierras Comunes (Communal Lands)	1985	Indigenous or peasant communities as collective entities, with or without legal personality	
Guyana	Community Forest Management Agreement (CFMA)	2010	Community groups	
	Titled Amerindian Village Land	2010	Amerindian communities in existence for more than 25 years and comprised of at least 150 persons	
India	Scheduled Tribes and Other Traditional Forest Dwellers Land	2007	Forest-dwelling Scheduled Tribes or other traditional forest dwellers on all forest lands, who occupied forest land before the 13th day of December, 2005	

	Tenure Regime Forest Area (hectares)	Time limit	Access	Withdrawal (NFP)	Withdrawal (Timber)	Management	Exclusion	Alienation (lease)	Alienation (Collateral)	Alienation (Sales)	Extinguishability
	12,375,147	Unlimited	✓	✓	✓	✓	✓	✗	✗	✗	✓
	561,002	Unlimited	✓	✓	✓	✓	✓	✗	✗	✗	✓
	1,807,320	Unlimited	✓	✓	✗	✓	✓	✗	✗	✗	✓
	473,155	40 years (extendable)	✓	✓	✓	✓	✓	✓	n/a	✓	✓
	13,532,581	Limited	✓	✓	✓	—	✗	✗	✗	✗	✓
	10,578,408	Limited	✓	✓	✓	—	✗	✗	✗	✗	✓
	n.d	Limited	✓	✓	✓	✗	✗	✗	✗	✗	✓
	7,427,424	Limited	✓	✓	✓	✓	✓	✗	✗	✗	✓
	225,499	Limited	✓	✓	✓	✓	✓	✗	✗	✗	✓
	2,655,564	Limited	✓	✓	n/a	✓	✓	✗	✗	✗	✓
	988,357	Unlimited	✓	✓	✓	✓	✓	✗	✗	✗	✓
	110,579,712	Unlimited	✓	✓	✓	✓	✓	✗	✗	✗	✓
	179,375	15 years (renewable)	✓	✓	✓	✓	✓	✗	✗	✗	✓
	n.d.	15 years	✓	✓	—	✓	✗	✗	✗	✗	✗
	n.d.	Unlimited	✓	—	—	✓	✓	✗	✗	✗	✓
	677,233	Renewable every five years as long as the community continues to comply with the prescriptions of the Community Forest Management Agreement	✓	✓	✓	✓	✓	✓	✗	✗	✓
	119,519,800	Unlimited	✓	✓	✓	✓	✓	✓	✗	✗	✓
	26,485,028	Unlimited	✓	✓	✓	✓	✓	✗	✗	✗	✓
	3,361,645	Unlimited	✓	✓	✓	✓	✓	✗	✗	✗	✓
	0	Unlimited	✓	✓	✓	✓	✗	✗	✗	✗	✓
	0	25 years (renewable)	✓	✓	✓	✓	tbd	✓	✗	✗	✗
	0	Unlimited	✓	✓	✓	✓	✗	✗	✗	✗	✗
	8,300,000	Unlimited	✓	—	—	✗	✗	✗	✗	✗	✓
	0	To be determined	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd
	500,000	Up to 50 years (renewable)	✓	✓	✓	✓	✓	✗	✗	✗	✓
	294,080	Unlimited	✓	✓	✓	✓	✓	✓	✓	✓	✓
	0	Limited	✓	case by case	case by case	✓	case by case	case by case	case by case	case by case	✓
	2,488,000	Unlimited	✓	✓	✓	✓	✗	✓	✗	✗	✓
	1,601,524	Unlimited	✓	✓	✓	✓	✓	✗	✗	✗	✓

Country	Tenure Regime	Year of Regime's Creation	Legislation confers rights to	
Indonesia	Adat Forest (Customary Law Forest)	1999 (2000)	Customary Communities with recognized existence	
	Hutan Kemasyarakatan (Rural or Community Forest)	2007	Rural institutions that can form a cooperative	
	Kemitraan (Partnership)	2007	Local communities	
	Hutan Tanaman Rakyat (People Plantation or People Plant Forest)	2007	Individuals, Households, or Village Cooperatives	
Kenya	Community Lands	2010	Communities identified on the basis of ethnicity, culture or similar community of interest	
	Community Permission to Participate in the Conservation and Management of a State Forest or Local Authority Forest	2007	Community Forest Associations registered under the Societies Act	
Liberia	Communal Forests	2006	Local Communities or Tribes	
	Community Forests	2006	Communities	
Malaysia	None	-	-	
Mexico	Ejidos Localizados en Tierras Forestales (Ejidos Located on Forestlands)	1917	Ejidatarios (Typically, heads of ejido community households)	
	Comunidades (Communities)	1917	Ejidatarios (Typically, heads of Ejido community households)	
Mozambique	Zones of Historical and Cultural Use and Value	1999	Local communities	
	Community DUATs Within Multiple Use Areas	2007	Local communities according to their customary practices	
	Forest Concessions to Communities	1999	Local communities	
Nepal	Community Forest	1993	Communities	
	Community Leasehold Forest Granted to Communities	1993	Communities	
	Religious Forests Transferred to a Community	1993	Communities registered pursuant to prevailing laws	
	Buffer Zone Community Forest	1993	Registered User Committee	
	Buffer Zone Religious Forest Transferred to a Community	1993	Communities	
Nigeria	None	-	-	
PNG	Common Customary Land	1975 (1991)	Customary Land Owners	
Peru	Tierras de Comunidades Nativas con Aptitud Forestal (Native Community Forest Lands Suitable for Forestry)	1993	Legally recognized native Communities	
	Tierras de Comunidades Campesinas con Aptitud Forestal (Peasant Community Forestlands Suitable for Forestry)	1993	Legally recognized peasant communities	
	Reservas Comunales en suelo forestal (Communal reserves in Forest Land)	1997	Peasant or native communities belonging to indigenous or local populations which are organized and meet the criteria of neighborliness, traditional use of natural resources and conservation practices concerning biodiversity.	
	Reserva Indigenas (Indigenous Reserves)	2006	An Indigenous People in a situation of isolation or initial contact.	
Tanzania	Village Land Forest Reserve (VLFR)	2002	Village Assembly	
	Community Forest Reserves	2002	A Community Forest Management Group (CFMG)	
	Joint Forest Management (JFM)	2002	Community Groups	
Thailand	Community Land Use Permit	2010	Communities	
Venezuela	Tierras Indígenas en Áreas Bajo Régimen de Administración Especial (ABRAE) (Indigenous in Special Administration Regime)	1999	Indigenous people and communities	
Viet Nam	Forestland Allocated to Communities	2004	Village population communities	
Zambia	Joint Forest Management Area (JFMA)	2006	Forest Committee	

For most data points:

- ✓ the law guarantees the right
- ✗ the law does not guarantee the right

	Tenure Regime Forest Area (hectares)	Time limit	Access	Withdrawal (NTPP)	Withdrawal (Timber)	Management	Exclusion	Alienation (lease)	Alienation (Collateral)	Alienation (Sales)	Extinguishability
	n.d.	Unlimited	✓	✓	✓	✓	✗	✗	✗	✗	✓
	60,599	Limited - 35 years (renewable)	✓	✓	✓	—	✓	✗	✗	✗	✗
	n.d.	Limited	case by case	case by case	case by case	case by case	✗	n/a	n/a	n/a	✗
	39,083	Up to 60 years	✓	✓	✓	✗	✓	✗	✗	✗	✓
	0	To be determined	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd
	n.d.	Limited	✓	✓	✓	✗	✗	✗	✗	✗	✗
	n.d.	Unlimited	✓	—	—	✓	✗	✓	✗	✗	✗
	10,001	Unlimited	✓	✓	✓	✓	✓	✓	✗	✗	✓
	n/a	-	-	-	-	-	-	-	-	-	-
	21,470,166	Unlimited	✓	✓	✓	✓	✓	✓	✓	✓	✓
		Unlimited	✓	✓	✓	✓	✓	✓	✓	✗	✓
	n.d.	Unlimited	✓	—	—	✓	✗	✗	✗	✗	✗
	4,642,520	Unlimited	✓	✓	✓	—	✓	✗	✗	✗	✓
	0	Up to 50 years (renewable for another 50)	✓	✓	✓	✓	✓	✓	n/a	✓	✓
	1,652,654	Unlimited	✓	✓	✓	✓	✓	✗	✓	✗	✗
	38,918	40 years (renewable)	✓	✓	✓	✓	✓	✓	✗	✓	✗
	543	Unlimited	✓	✓	—	✓	✗	✗	✗	✗	✗
	n.d.	Unlimited	✓	—	—	✓	✓	✗	✗	✗	✗
	n.d.	Unlimited	✓	✗	—	✓	✗	✗	✗	✗	✗
	n/a	-	-	-	-	-	-	-	-	-	-
	25,078,930	Unlimited	✓	✓	✓	✓	✓	✓	✓	✓	✓
	12,040,110	Unlimited	✓	✓	✓	✓	✓	✗	✗	✗	✓
	746,370	Unlimited	✓	✓	✓	✓	✓	✓	✓	✗	✓
	1,753,800	Unlimited	✓	✓	✓	✓	✗	✗	✗	✗	✓
	2,812,000	Unlimited	✓	—	—	✓	✓	✗	✗	✗	✓
	456,397	Unlimited	✓	✓	✓	—	✗	✗	✗	✗	✗
	n.d.	Unlimited	✓	✓	✓	—	✗	✗	✗	✗	✗
	1,770,000	Limited	✓	✓	✓	—	✗	n/a	n/a	n/a	✓
	0	Limited	✓	✓	✓	✗	✓	✗	✗	✗	✗
	n.d.	Unlimited	✓	✓	✓	✓	✗	✗	✗	✗	✓
	3,480,000	50 years (renewable)	✓	✓	✓	✓	✓	✗	✗	✗	✓
	0	Limited	✗	case by case	case by case	—	✗	✗	✗	✗	✗

**For data on withdrawal rights:**

- ✓ the law guarantees a commercial withdrawal right that is subject to the terms and limits of management plans and/or licenses and environmental and other legislation
- the law only guarantees a subsistence withdrawal right
- ✗ the law does not guarantee the right

**For data on management rights:**

- ✓ the law guarantees the right to manage within the limits of management plans and environmental and other legislation
- the law guarantees a community the right to participate on a management board
- ✗ the law does not guarantee the right

## ENDNOTES

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- <sup>3</sup> White and Martin 2002:6
- <sup>4</sup> Sunderlin, William D., Jeffrey Hatcher, and Megan Liddle. 2008. *From Exclusion to Ownership? Challenges and opportunities in advancing forest tenure reform*. Washington DC: Rights and Resources Initiative (RRI) [http://www.rightsandresources.org/documents/files/doc\\_736.pdf](http://www.rightsandresources.org/documents/files/doc_736.pdf); RRI/ITTO. 2009. *Tropical Forest Tenure Assessment: Trends, Challenges and Opportunities*. Co-published by: Rights and Resources Initiative and International Tropical Timber Organization.
- <sup>5</sup> EU FLEGT Facility and RECOFTC, *Forest Tenure in Asia: Status and Trends*. Kuala Lumpur. 2011.
- <sup>6</sup> See, for example: Asian Development Bank. 2009. *Land and cultural survival: the communal land rights of Indigenous Peoples in Asia*. Mandaluyong City, Philippines: Asia Development Bank. p139–211. <http://www.adb.org/documents/Books/Land-Cultural-Survival/land-cultural-survival.pdf>; Bulan, Ramy. Undated. *Recent developments on forests and land tenure issues in Malaysia*. Kuala Lumpur: Centre for Indigenous Malaysian Studies, University of Malaya; Brown, David. 2008. *Prospects for community forestry in Liberia: implementing the national forest policy*. Monrovia, Liberia: Sustainable Development Institute. [www.odi.org.uk/resources/download/4650.pdf](http://www.odi.org.uk/resources/download/4650.pdf); Alden Wily, Liz. 2011. *Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa*. Washington DC: Rights and Resources Initiative (RRI).
- <sup>7</sup> The developing world is defined as countries classified as low-income, lower-middle-income and upper-middle-income countries by the World Bank. The total forest area of the 27 countries presented here is 1.66 billion hectares, while the total forest area for developing countries is 2.25 billion hectares (Russia is excluded from these calculations because its coverage of forest area has statistically distorting effects). FAO. 2011. *Global forest resources assessment 2010*. FAO Forestry Paper 163. Rome: FAO.
- <sup>8</sup> REDD+ encourages developing countries to contribute to climate-change mitigation in the forest sector through the following activities: reducing emissions from deforestation and forest degradation; conservation of forest carbon stocks; the sustainable management of forests; and the enhancement of forest carbon stocks.
- <sup>9</sup> “Establishing ... systems of conservation units for their environmental, social and spiritual functions and ... the traditional forest habitats of indigenous people, forest dwellers and local communities” [Agenda 21 Chapter 11.13b]; “Involvement of indigenous people and their communities at the national and local levels in resource management and conservation strategies” [Agenda 21 Chapter 26.3]; “National forest policies should recognize and duly support the identity, culture, and the rights of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted ... through, inter alia, land tenure arrangements ... [Forest Principles (non-legally binding), Principle 5a].
- <sup>10</sup> Blomley, Tom et al., 2008. “Seeing Wood for the Trees: an assessment of the impact of participatory forest management on forest condition in Tanzania.” *Oryx*. 42(3): 380–391.; Ellis, Edward A., and Luciana Porter-Bolland. 2008. “Is community-based forest management more effective than protected areas?: A comparison of land use/land cover change in two neighboring study areas of the Central Yucatan Peninsula, Mexico.” *Forest Ecology and Management*. 256(11): 1971–1983. Chharte, Ashwini and Arun Agarwal. 2009. “Trade-offs and synergies between carbon storage and livelihood benefits from forest commons.” *PNAS*. ; Ojha, Hemant, Persha, Lauren and Ashwini Chharte. 2009. *Community Forestry in Nepal: A Policy Innovation for Local Livelihoods*. Washington DC: International Food Policy Research Institute (IFPRI); Nelson, Andrew and Kenneth M. Chomitz. 2011. “Effectiveness of strict vs. multiple use protected areas in reducing tropical forest fires.” *PLoS ONE*. 6(8): e22722.; Porter-Bolland, Luciana et al. 2011. “Community managed forests and forest protected areas: An assessment of their conservation effectiveness across the tropics.” *Forest Ecology and Management*.
- <sup>11</sup> Common-pool resources managed through systems of “common property” are often confused with “open access” resources in which there are no management mechanisms to allocate or regulate access or withdrawal rights. In contrast, common-pool resources, such as forests, are often managed and regulated through complex sets of social and political interactions. The illusion of “open access” is created when enforcement mechanisms fail and more powerful entities take advantage of local rights-holders’ relative inability to exclude.
- <sup>12</sup> The concept of the ‘bundle of rights’ is a tool in that it helps to unpack the complex power relations and land uses found on a particular landscape. Individuals and groups may hold different sets of rights in the resources within a particular system. These distinct sets of rights are known as a tenure (Bruce 1989). A tenure system is therefore the framework that facilitates the allocation of rights, enforces rules and manages relations amongst different rights-holders and interactions with other systems. Multiple typologies have been proposed to categorize the various rights found within the bundle, however Schlager and Ostrom’s seminal 1992 paper played a major role in popularizing the basic typology used in this study. Bruce, John W. 1989. *Community forestry rapid appraisal of tree and land tenure*. Community Forestry Note 5. Rome: Food and Agriculture Organization (FAO); For typology, see: Schlager, Edella, and Elinor Ostrom. 1992. “Property-rights regimes and natural resources: A conceptual analysis”. *Land Economics*. 68 (3): 249–62 and Barry, Deborah and Ruth Meinzen-Dick, 2008. “The Invisible Map: Community tenure rights.” *Food Policy*. 1-27.
- <sup>13</sup> The distinction between revoking and extinguishing a right is a nuanced one. Extinguishing suggests that the state can arbitrarily eliminate or attenuate a community’s established rights. Revoking suggests that the state has a “moral” right to eliminate the community’s right, for example if a community violates its contractual terms by exploiting a resource beyond the parameters of its legally-defined withdrawal rights.



- <sup>14</sup> For example, in the case of the Brazilian Extractive Reserves, the regime is created specifically to recognize rights of traditional populations to NTFPs; however, under very specific conditions these populations are also allowed to commercialize timber resources. For comparative purpose, it was considered that communities have commercial rights to timber resources if complying with the condition of management plans and/or specific license.
- <sup>15</sup> Lynch, Owen. 2011. *Mandating Recognition: International law and native/aboriginal title*. Washington, DC: Rights and Resources Initiative. [http://www.rightsandresources.org/documents/files/doc\\_2407.pdf](http://www.rightsandresources.org/documents/files/doc_2407.pdf)
- <sup>16</sup> Riddell, James C. 1987. "Land Tenure and Agroforestry: A Regional Overview." In: J.B. Raintree, ed. *Land, Trees and Tenure: Proceedings of an International Workshop on Tenure Issues in Agroforestry*. Nairobi: International Council for Research in Agroforestry; Bruce, John W. 1989
- <sup>17</sup> Alden Wily, Liz 2011. *Tragedy of the Public Lands: The fate of the Commons under global economic pressure*. Rome: International Land Coalition (ILC) and CIRAD.
- <sup>18</sup> This study's definition of access is legalistic (in that it is a right defined by law) rather than reflective of a reality in which people who are "excluded" in a legal sense are still able to benefit from the resource, even if they do not have legally defined rights. The latter approach was theorized in Ribot, Jesse and Nancy Lee Peluso. 2003. "A Theory of Access". *Rural Sociology*. 68(2): 153-181.
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- <sup>20</sup> See for example: the Bolivian Supreme Decree No. 27572/2004 regulating *Títulos Comunales para Comunidades Agro-Extractivas (Norte Amazónico)* (Communal Titles for Agro-Extractive Communities in the Northern Amazonian Region), the Brazilian National Conservation Units (SNUC) Law No. 9985/2000; Indonesian Basic Forestry Law No. 41/1999; the Tanzanian Forest Act, 2002.
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- <sup>22</sup> Thailand - Section 54. Forest Act, 1941.
- <sup>23</sup> Thailand - Sections 16 and 24–27. National Park Act. 1961.
- <sup>24</sup> RECOFTC. Forthcoming. *Rethinking regulatory barriers to communities and smallholders earning their living from timber*. Bangkok: RECOFTC.
- <sup>25</sup> Cambodia - Article 22. Protected Area Law. 2008.
- <sup>26</sup> Wells, Adrian, et al 2007, study of illegal timber extraction practices in Honduras and Nicaragua found that excessive barriers imposed on local producers for legal compliance of their extractive livelihoods drove them into the illegal realm. While operating in this sphere could bring local timber producers short term income, these practices undercut the incentives for sustainable extraction and eroded local social and natural capital, which reduced the resilience of local livelihoods in the longer term. Wells, Adrian, et al 2007 "Rural Livelihoods, Forest Law and Illegal Timber Trade in Honduras and Nicaragua." In: Tacconi, Luca ed, *Illegal Logging: Law Enforcement, Livelihoods and the Timber Trade*. London: EarthScan. 139 -166.
- <sup>27</sup> Wells et al's (2007) study of illegal timber extraction practices in Honduras and Nicaragua found that excessive barriers imposed on local producers for legal compliance of their extractive livelihoods drove them into the illegal realm. While operating in this sphere could bring local timber producers short term income, these practices undercut the incentives for sustainable extraction and eroded local social and natural capital, which reduced the resilience of local livelihoods in the longer term. Wells, Adrian, et al. 2007. "Rural Livelihoods, Forest Law and Illegal Timber Trade in Honduras and Nicaragua." In: Tacconi, Luca (ed). *Illegal Logging: Law Enforcement, Livelihoods and the Timber Trade*. London: EarthScan. 139 -166.
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- <sup>29</sup> Peru - Article 11, Resolution No. 019/2005.
- <sup>30</sup> Peru - Article 34, Resolution No. 019/2005.
- <sup>31</sup> In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982).
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- <sup>33</sup> Hall, Derek , Hirsch, Philip, and Tania Murray Li. 2011: 6.
- <sup>34</sup> For further information see: Barry, Deborah, Larson, Anne M., and Carol J Pierce Colfer. 2010. "Forest Tenure Reform: An orphan with only uncles." In: Larson, Anne M, Barry, Deborah, Dahal Ganga Ram and Carol J Pierce Colfer (eds). *Forest for People: Community Rights and Forest Tenure Reform*. London: EarthScan.19-39.
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- <sup>37</sup> Hall, Derek , Hirsch, Philip, and Tania Murray Li. 2011:8.

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- <sup>46</sup> Randolph, Carman F. 1887. "The Eminent Domain." *Law Quarterly Review*. 3(3): 314-325.
- <sup>47</sup> White, Andy and Alejandra Martin. 2002.; Sunderlin, William D., Jeffrey Hatcher, and Megan Liddle. 2008.; and RRI and ITTO. 2008.
- <sup>48</sup> Written comments by Janette Bulkan, Tom Griffiths, and John Palmer. 2011.
- <sup>49</sup> In the states of Peninsular Malaysia, the Aboriginal Peoples Act (1954) governs many aspects of the *Orang Asli* population and allows for the creation of Aboriginal areas and reserves. Sabah's Land Ordinance provides some protection for Indigenous customary rights, provided the communities formally register their traditional claims and follow strict conditions that must be met in order to claim customary land. In Sarawak, the Land Code (1958) recognized *Adat* or customary law in Sarawak and included native customary land as one of the State's land categories.
- <sup>50</sup> Fameso, T.F. 2008. Forest policy, legal and institutional framework: information sheet—Nigeria. Rome: Food and Agriculture Organization (FAO).
- <sup>51</sup> These regimes underwent significant reforms in 1992 and 2008. These later iterations of community tenure regimes were those that were analyzed in this study.
- <sup>52</sup> This list is not exhaustive; some tenure regimes cannot be classified as any of the three most common categories.
- <sup>53</sup> Constitutional regimes include the Bolivian *Territorio Indígena Originario Campesino* (Peasant Indigenous Territory), *Propiedades Comunitarias* (Communal Properties) and *Titulos Comunes para Comunidades Agro-extractivistas (Norte Amazónico)* (Communal Titles for Agro-Extractivist Communities in the Northern Amazonian Region); the Brazilian *Terras Indígenas* (Indigenous Lands) and *Territórios Quilombolas* (Quilombola Communities); Collective Ownership with Individual Property Rights to Forest Land in China; *Resguardos Indígenas (Indigenous Resguardos)* and *Tierras de las Comunidades Negras* (Afro-Colombian Community Lands) in Colombia; *Tierras Comunes* (Communal Lands) in Guatemala; Titled Amerindian Village Land in Guyana; *Adat Forest* (Customary Law Forest) in Indonesia; Community Land in Kenya; *Ejididos Localizados en Tierras Forestales (Ejididos located in forest land)* and *Comunidades* (Communities) in Mexico; Common Customary Land in PNG; *Tierras de Comunidades Nativas con Aptitud Forestal* (Native Community Forest Lands Suitable for Forestry) and *Tierras de Comunidades Campesinas con Aptitud Forestal* (Peasant Community Forest Lands Suitable for Forestry) in Peru; and, in Venezuela, *Tierras Indígenas en Areas Bajo Regimen de Administracion Especial* (ABRAE).
- <sup>54</sup> The only exceptions are *Tierras Comunes* (Communal Lands) in Guatemala, *Ejididos* in Mexico, and Common Customary Land in PNG.
- <sup>55</sup> This is the case of National Forest in Brazil, Customary Use Rights in Gabon, and Community Land Use Permits in Thailand.
- <sup>56</sup> Examples include Titled Amerindian Village Lands in Guyana, *Adat* and Partnership Forests in Indonesia, and Village Land Forest Reserves in Tanzania.
- <sup>57</sup> Brazil - Reserva Extrativista (RESEX)(Extractive Reserve), Reservas de Desenvolvimento Sustentável (Sustainable Development Reserves), Florestas Nacionais (FLONA)(National Forests).
- <sup>58</sup> Gabon - Des Droits d'Usages Coutumiers (Customary Use Rights)
- <sup>59</sup> Guyana - Titled Amerindian Village Land
- <sup>60</sup> Indonesia - Adat Forest (Customary Law Forest)
- <sup>61</sup> Sunderlin, William D., Jeffrey Hatcher, and Megan Liddle. 2008.
- <sup>62</sup> Tom Blomley and Charles Meshack, personal communication, 2011.
- <sup>63</sup> Mónica Hidalgo, Ermeto Tuesta, and Marguerita Benavides, personal communication, 2011.
- <sup>64</sup> Paul Opanga, personal communication, 2011.
- <sup>65</sup> Calculation by *Fundacion Tierra* based on data from the National Institute for Agrarian Reform (*Instituto Nacional de Reforma Agraria*) and the Vice-minister of Lands; as cited in: *Fundacion Tierra*. 2011. *Territorios Indígena Originario Campesinos en Bolivia Entre la Loma Santa y la Pachamama*. La Paz: Fundacion Tierra: 46.
- <sup>66</sup> Calculation based on data from Urioste, Quevedo, Guzmán and Rojas 2009. Evolución del régimen forestal implementado por la superintendencia forestal. Santa Cruz, Bolivia: Centro de Investigación y manejo de Recursos Naturales Renovables; as cited in: *Fundacion Tierra* 2011:130.

- <sup>67</sup> Unpublished 2007 data from the National Institute for Agrarian Reform, as cited in: Pacheco, Pablo, Deborah Barry, Peter Cronkleton and Anne M. Larson. 2009. El papel de las instituciones informales en el uso de los recursos forestales en América Latina. Bogor: Center for International Forestry Research: 38.
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- <sup>69</sup> CNFP/Servico Florestal Brasileiro. 2010. As cited in: Government of Brazil. 2010. Plano anual de manejo florestal comunitário e familiar 2011. Brasília: Brazilian Forest Service: 28.
- <sup>70</sup> CNFP/Servico Florestal Brasileiro 2010:28.
- <sup>71</sup> Regulatory provisions recognize the access and withdrawal rights of the traditional populations living in a National Forest at the time of its creation. Brazil's 65 National Forests cover over 16.34 million hectares, but no information is currently available on the proportion of this area to which traditional populations claim these rights.
- <sup>72</sup> CNFP/Servico Florestal Brasileiro 2010:28.
- <sup>73</sup> CNFP/Servico Florestal Brasileiro 2010:28.
- <sup>74</sup> CNFP/Servico Florestal Brasileiro 2010:28.
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- <sup>77</sup> G Government of Colombia. 2007. Superficie de bosques naturales, bosques plantados y vegetación secundaria en los resguardos indígenas. Map and data produced by *Instituto de Hidrología, Meteorología y Estudios Ambientales*. Bogotá: Instituto de Hidrología, Meteorología y Estudios Ambientales. As cited on the website of the Colombian Environmental Information System (*Sistema de Información Ambiental de Colombia*), accessed January 12, 2012.
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- <sup>88</sup> For example, Afro-Colombian Community Lands in Colombia, Titled Amerindian Village Land in Guyana, and Native Community Forest Lands Suitable for Forestry in Peru.
- <sup>89</sup> For example, Communal Property in Bolivia and all settlement projects in Brazil.
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- <sup>110</sup> Common Customary Land in PNG and Community Forest in Nepal.
- <sup>111</sup> Common Customary Land in PNG and Community Leasehold Forest granted to Communities in Nepal.
- <sup>112</sup> We did not include other rights (i.e. articles 8 and 26 of the 1994 Forest Code) that recognize customary access and use rights as we concluded that these rights pertain only to individuals and not to communities.
- <sup>113</sup> 2010 data from the Ministry of Forests and Wildlife, Government of Cameroon. As cited in: Cuny, Pascal. 2011. Etat des lieux de la foresterie communautaire et communale au Cameroun. Wageningen: Tropenbos International: 12.
- <sup>114</sup> Dr. Julius Chupezi Tiegunhong, CGIAR, personal communication, January 2012.
- <sup>115</sup> Théophile Gata, independent consultant, personal communication, January 2012.

- <sup>116</sup> See Country Profile Annex on the Rights and Resources Initiative's tenure data webpage. [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata)
- <sup>117</sup> Government of Gabon. 2009. Report of progress toward achieving sustainable forest management in Gabon. Submission to ITTO by Nsitou Mabiála, Libreville, Gabon. As cited in: Blaser, Juergen, Alastair Sarre, Duncan Poore, and Steven Johnson. 2011. State of tropical forest management 2011. Yokohama: International Tropical Timber Organization: 95.
- <sup>118</sup> See Country Profile Annex on the Rights and Resources Initiative's tenure data webpage. [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata)
- <sup>119</sup> See Country Profile Annex on the Rights and Resources Initiative's tenure data webpage. [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata)
- <sup>120</sup> A range of official and unofficial reports from the Kenyan government and others cumulatively report that at least nine community forest agreements have been signed under this regime since the passage of the Forest Act, 2005.
- <sup>121</sup> RRussell, Diane, Andrew Tobiason, Kenneth Hasson, David M. Miller, and Paul De Wit. 2011. The Final evaluation of the USAID Land Rights and Community Forestry Program, Liberia. Washington DC: USAID:18–19.
- <sup>122</sup> National Directorate of Land and Forests data, November 2009. As cited in De Wit, Paul and Simon Norfolk. 2010. Recognizing rights to natural resources in Mozambique. Washington DC: Rights and Resources Initiative: 10, 14–15.
- <sup>123</sup> 2006 data from the National Directorate for Land and Forests, Ministry of Agriculture. As cited in: Siteo, Almeida A. and Flavia J. Tchaúque. 2007. Trends in forest ownership, forest resources tenure and institutional arrangements: are they contributing to better forest management and poverty reduction? A case study from Mozambique. In: FAO. 2008. Understanding forest tenure in Africa. Forest Policy and Institutions Working Paper 19. Rome: FAO: 13; Mackenzie and Ribeiro 2009: 12,19.
- <sup>124</sup> Government of Tanzania. 2006. Data from Ministry of Natural Resources and Tourism. As cited in: Akina, Amina and Rosina Bromley. 2008. Trends in forest ownership, forest resources, tenure and institutional arrangements: Are they contributing to better forest management and poverty reduction? Rome: Food and Agriculture Organization (FAO).
- <sup>125</sup> Blomley, Tom and Said Iddi. 2009. Participatory forest management in Tanzania 1993–2009: Lessons learned and experiences to date. Report commissioned by the Forestry and Beekeeping Division. Nairobi: Ministry of Natural Resources and Tourism: 19.
- <sup>126</sup> Jacob Mwitwa, Professor of Natural Resource Management, Copperbelt University, Kitwe, Zambia, personal communication, March 2012.
- <sup>127</sup> Promotion and Protection of Indigenous Populations Act N° 5/2011.
- <sup>128</sup> In contrast, by 2000, seven of the eight Latin American countries and four of the nine Asian countries had already done so.
- <sup>129</sup> The Kivu region in the DRC is still in conflict and the Ituri region was at war until 2007. See: Vlassenroot, Koen and Chris Huggins. 2005. "Land, Migration and Conflict in eastern DRC". In: Huggins, C. and Clover, J., (eds). *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa*. Pretoria: Institute for Security Studies: 115-194. ; On Liberia, see: Unruh, Jon D. 2009. "Land Rights in Post-War Liberia: The Volatile Part of the Peace Process." *Land Use Policy*. 26: 425–433
- <sup>130</sup> Tom Blomley, personal communication, 2011; Charles Meshack, personal communication, 2011; Jacob Mwitwa, personal communication, 2011; and Rose Fumpa-Makan, personal communication, 2011.
- <sup>131</sup> In three of the 17, the law has not yet determined whether communities have the right to exclude; in 10 of the 17, it is explicitly stated that communities do not have the right to exclude others.
- <sup>132</sup> Singer, Joseph W. 2000. *Entitlement: The Paradoxes of Property*. New Haven, CT: Yale University Press.
- <sup>133</sup> Underkuffler, Laura S. 1995. "Property: A special right". *Notre Dame Law Review*. 71: 1033–1058.
- <sup>134</sup> Ping, Li. 2007. The Impact of Regulatory Takings by the Chinese State on Rural Land Tenure and Property Rights. Washington DC: Rights and Resources Initiative.
- <sup>135</sup> See [www.reddplusdatabase.org](http://www.reddplusdatabase.org)
- <sup>136</sup> See [www.un-redd.org/AboutREDD/tabid/582/Default.aspx](http://www.un-redd.org/AboutREDD/tabid/582/Default.aspx)
- <sup>137</sup> During this phase of the study we analyzed approximately 170 legal instruments.
- <sup>138</sup> The only exception was Venezuela, for which we could not find experts who were willing to assist us in reviewing the preliminary data we had collected. Almost 90 reviewers assisted us with this phase of the study.







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