

Power and Potential: A Comparative Analysis of National Laws and Regulations Concerning Women's Rights to Community Forests (RRI, May 2017)

Overview

- 2.5 billion people use and rely on the world's community territories, which cover over 50 percent of the world's land. Yet community and indigenous women are historically under-represented in discussions of women's property rights.
- While many women in impoverished regions have made positive strides without secure legal land rights, strong tenure rights for community women are essential to their livelihood, self-determination, and wellbeing. Tenure rights also provide stability in the face of climate change and food shortages. Without legal recognition, women are more vulnerable to a host of injustices, including poverty, disease, and domestic violence.
- Secure, legally recognized rights for communities contribute to global goals on climate, poverty reduction, and peace, but the benefits of community forest ownership can only be realized if women's rights within communities are recognized.
 - A growing number of rural households around the world are led by women due to migration, conflict, disease, and other factors. Indigenous and rural women are therefore assuming even greater responsibilities for the management and governance of community lands.
- The study analyzed 80 legal frameworks regulating community forest tenure in 30 low- and middle-income countries that cover more than three quarters of the developing world's forests.
 - It examined overarching rights—which affect all women in a country—to constitutional equal protection, property, and inheritance.
 - It also examined community-level tenure rights to community membership, inheritance, voting, leadership, and dispute resolution.
- The lack of protection for women undermines the forest protections in these countries.
 - Earlier research from RRI shows that Indigenous Peoples and local communities manage at least [24 percent of the total carbon](#) stored aboveground in the world's tropical forests.
 - Recent research from the Inter-American Development Bank showed that securing Indigenous and community land rights in the Peruvian Amazon [reduced forest destruction](#).
- The study finds that the legal advancement of women and their communities go hand in hand.
 - Laws recognizing community forest ownership provide the most robust legal protections for indigenous and rural women's forest rights, suggesting that community-focused laws can serve as powerful tools for advancing the rights of women.

Power and Potential: A Comparative Analysis of National Laws and Regulations Concerning Women's Rights to Community Forests (RRI, May 2017)

Key Findings and Implications

Governments are not respecting indigenous and rural women's tenure rights and are failing to meet international obligations to do so in all 30 low- and middle-income countries assessed.

- **All of the countries analyzed have ratified the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and yet not one meets the minimum standards established in the treaty**
- Of the 80 legal frameworks regulating community forests:
 - Only 3 percent adequately protect women's community-level voting rights
 - Only 5 percent adequately protect women's rights to lead communities
 - Only 10 percent adequately protect women's community-level inheritance rights
 - Only 16 percent adequately protect women's right to community-level dispute resolution
 - Only 29 percent adequately women's right to community membership
- Of the 30 low- and middle-income countries assessed, results for the three overarching rights that affect all women in a country:
 - Constitutional equal protection: 93 percent of the countries examined prohibit gender-based discrimination or explicitly guarantee women equal protection under the constitution. Only **Indonesia** and **Thailand** do not.
 - Property rights: Only seventeen (57 percent) of the 30 countries analyzed specifically affirm women's property rights.
 - Inheritance: Only eight of the 30 countries assessed mandate that daughters, widows, and unmarried women in consensual unions have equal rights to inherit alongside their male counterparts.
 - Only eight of the 30 countries have intestate inheritance laws that provide equal protections.
 - More than a third of the countries assessed (India, Indonesia, Kenya, Mali, Myanmar, Panama, Papua New Guinea, Philippines, Senegal, Tanzania, and Zambia) have laws that legally discriminate against daughters, widows, and/or women in consensual unions, or defer to religious or customary law without safeguarding women's inheritance rights.

Conservation-oriented legal frameworks regulating community-held lands offer the fewest and weakest protections for women's tenure rights.

- Conservation-oriented legal frameworks provide women even weaker statutory recognition than natural resource exploitation-oriented sets of laws.
- Legal frameworks that provide avenues for communities to own forests and those that are created with the express purpose of acknowledging community-based rights provide the greatest protections for women's rights.

There are no clear winners when comparing Asia, Africa, and Latin America:

- Countries reviewed in **Africa** (11) provide the most consistent affirmation of women's property rights and greatest recognition of women's community-level dispute-resolution rights, but they also afford indigenous and rural women the weakest community-level inheritance and voting rights.

- Of the laws examined in this study, those establishing registered community lands in **Kenya** contain some of the most detailed protections for women’s membership rights, as they explicitly account for situations of divorce, widowhood, and remarriage.
- Of the three regions, community-specific legal regimes in the 10 **Asian** countries provide the highest level of protection for women’s community-level inheritance, voting, and leadership rights.
- None of the Asian or African countries in the study recognize the overarching rights of unmarried women in consensual unions to inherit land through intestate succession (inheritance rights in the absence of a will), and between 45-50 percent of assessed countries in both regions do not equitably protect women’s inheritance rights.
- The nine countries in **Latin America** provide the strongest protections for women’s overarching inheritance rights and greater recognition of women’s community-level membership rights, but lag behind countries in Africa and Asia with respect to women’s community-level leadership rights and the affirmation of women’s property rights in overarching laws.
 - Eight of the nine Latin American countries assessed provide equal statutory protection for the overarching inheritance rights of daughters, widows, and women in consensual unions; these are the only countries among the 30 reviewed LMICs that safeguard the inheritance rights of women in consensual unions.

There is a particularly pressing need for legal reforms regarding women’s governance (voting and leadership) and community-level inheritance rights.

- Inheritance: Individuals’ right to inherit community lands and resources is the least acknowledged community-level right assessed. 58 of the 80 community-specific legal regimes (73 percent) analyzed fail to address community-level inheritance in any respect.
- Governance: Women’s rights to participate in community-level governance through voting and leadership—arguably the legal entitlements most necessary for asserting their voice in the decision-making processes that affect them—are the least protected community-level tenure right.
 - Only 3 percent of community-specific legal regimes adequately protect women’s voting rights.
 - Only 5 percent of community-specific legal regimes adequately protect women's leadership rights.

Power and Potential: A Comparative Analysis of National Laws and Regulations Concerning Women's Rights to Community Forests (RRI, May 2017)

Key Recommendations

The analysis establishes a baseline with which to measure global progress on the Sustainable Development Goals related to women's rights, and provides key recommendations to encourage urgently needed legislative reforms that protect women's rights to their customary lands:

1. In accordance with countries' national constitutions and obligations under CEDAW, governments should work with Indigenous Peoples and local communities to create and implement national laws and regulations that explicitly recognize all women's equal rights to property, inheritance, and protection under the constitution, and that specifically ensure indigenous and rural women's equal rights to community-level membership, inheritance, governance, and dispute resolution.
2. Through the establishment of safeguards and guidelines in collaboration with Indigenous Peoples and local communities, governments should commit to the recognition of indigenous and rural women's forest rights under international frameworks and agreements—including REDD+ initiatives and the Paris Agreement.
3. Governments, civil society, international development actors, and the private sector should support and work with indigenous and rural women to advance their tenure rights at a community and national level.
4. Governments, civil society organizations, and international actors should consistently collect and make public gender-disaggregated data on the tenure rights and practices of Indigenous Peoples and local communities.
5. Communities, governments, business actors, and other stakeholders should ensure that all land-based developments and REDD+ projects consider, respond to, and uphold the tenure rights of women in indigenous and local communities.
6. Women's rights to fully participate in governance processes is particularly important in community negotiations with actors external to the community, including local elites, private corporations, and the state. Therefore, corporations and investors should apply the highest international standards with respect to due diligence and all interactions with Indigenous Peoples and local communities, and should not assume that national laws are sufficient to safeguard women's rights concerning community forests. The principles of free, prior, and informed consent (FPIC) cannot be applied if women are excluded from the community governance bodies that negotiate land acquisition agreements.