

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

Overview of the Report's Findings

- Up to 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.
 - 10 **Asian** countries with 26 legal frameworks regulating community forestland were examined: Cambodia, China, India, **Indonesia**, Myanmar, Nepal, Papua New Guinea, Philippines, Thailand, and Vietnam.
- 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 InterAmerican Development Bank showed that securing Indigenous and community land rights in the Peruvian Amazon [reduced forest destruction](#) by more than three quarters and forest disturbances by more than two thirds in the year land title is awarded, as well as the year afterward.
- 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.

Key Findings and Implications for Indonesia

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 (including Indonesia) have ratified the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and none meet the minimum standards established in the treaty.**
- None of the six legal frameworks identified in **Indonesia** adequately protect women's rights to community-level inheritance, membership, governance, or dispute resolution.
- Indonesian results for the three overarching rights (that affect all women in the country):
 - **Constitutional equal protection: Indonesia's Constitution is one of only two constitutions assessed that does not explicitly protect women from gender-based discrimination and/or expressly guarantee women equal protection under the law.**
 - **Property rights:** Only seventeen (57 percent) of the 30 countries analyzed—including **Indonesia**—specifically affirm women's property rights.
 - **Overarching inheritance rights:**
 - **None of the assessed countries in Asia recognize the inheritance rights of women in consensual unions. Indonesia has reportedly considered criminalizing consensual unions.**
 - More than a third of the countries assessed (including **Indonesia**) 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.
 - The Civil Code of **Indonesia** does not recognize consensual unions of Indigenous Peoples and local communities as legally valid. Therefore, inadequate legal protection for women in consensual unions is a significant obstacle to their tenure security.

Comparing Africa, Asia, and Latin America:

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

- Of the three regions, legal frameworks that regulate community forest tenure in the **10 Asian countries provide the highest level of protection for women's community-level inheritance, voting, and leadership rights.** Voting and leadership rights are key for women to assert their voice in the decision-making processes that affect them. Inheritance rights are essential for women's economic security—and sometime their very survival.
 - **Community-level inheritance rights: Asian countries provide the greatest protection for women's community-level inheritance rights. Half of the 10 Asian countries assessed establish plural inheritance regimes, some of which inequitably protect—or inherently discriminate against—women.**
 - **Community-level voting and leadership rights: Among the three regions analyzed, Asian countries provide slightly more protection for women's community-level voting and leadership rights, arguably the most important right for women to participate in the decision-making processes that affect them.**

Key Recommendations

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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.