

# 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. In **Peru**, the number of rural households led by women is rising. According to data from the [Food and Agriculture Organization of the United Nations](#), it rose from 13.3 to 16.3 percent in 2011.
- 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.
  - 9 countries in Latin America with 28 legal frameworks regulating community forestland were examined: Bolivia, Brazil, Colombia, Guatemala, Guyana, Mexico, Panama, **Peru**, and Venezuela.
- 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](#) 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 Peru**

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 Peru) 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.**
- Results for the three overarching rights (that affect all women in the country):
  - Constitutional equal protection: 93 percent of the countries examined (including Peru) prohibit gender-based discrimination or explicitly guarantee women equal protection under the constitution. Only Indonesia and Thailand did not.
  - Property rights: **Latin America lagged behind Asia and Africa in recognizing women's property rights in overarching laws.** Only four of the 9 Latin American countries assessed contain overarching laws that generally affirm the property rights of women. Peru does not.
  - Overarching inheritance rights:
    - **Latin American countries provide the strongest protections for all women's overarching inheritance rights.** In Peru, although surviving spouses, daughters, and women in consensual unions have the right to inherit under national laws pertaining to all women, this right is not protected in community-level laws and regulations. Only two of the 28 legal frameworks regulating community forests (both in Mexico) address women's *community-level* inheritance rights.
    - Inheritance rights are vital to preventing economic violence, including property grabbing against women. Latin America's comparatively high results for protections for women's inheritance rights parallels the fact that 7 of the 9 Latin American countries in the report prohibit economic forms of domestic violence, according to the World Bank's Women, Business, and the Law Database. However, according to this source, Peru's domestic violence legislation reportedly does not prohibit economic forms of domestic violence.

## **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 9 **analyzed countries in Latin America provide the greatest protection for indigenous and rural women's community-level membership rights, the most fundamental community rights examined in the report.**
- **Analyzed Latin American countries lag behind assessed countries in Africa and Asia with respect to the recognition of women's community-level leadership and dispute resolution rights.**
  - Community-level leadership is arguably the most important right for women to participate in the decision-making processes that affect them. Only 1 of the 28 legal frameworks analyzed in Latin America recognized the specific rights of women to serve as leaders on community-level executive bodies, despite the sacrifices made by many indigenous and rural women leaders in Latin America (including Berta Cáceres, who was

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- murdered in 2016), who have zealously advocated for the tenure rights of their communities at great risk to their own safety.
- While community governance and dispute resolution are addressed in the laws regulating three of the four community-specific sets of laws in **Peru** (Tierras de Comunidades Nativas con Aptitud Forestal, Reservas Comunales en suelo forestal, and Tierras de Comunidades Campesinas con Aptitud Forestal), women's rights to vote in community leadership bodies and access dispute resolution mechanisms are not guaranteed.

### 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.