

# Power and Potential

A COMPARATIVE ANALYSIS OF  
NATIONAL LAWS AND REGULATIONS CONCERNING  
WOMEN'S RIGHTS TO COMMUNITY FORESTS

## Executive Summary



RIGHTS AND RESOURCES INITIATIVE MAY 2017

## The Rights and Resources Initiative

RRI is a global coalition consisting of 15 Partners, 7 Affiliated Networks, 14 International Fellows, and more than 150 collaborating international, regional, and community organizations dedicated to advancing the forestland and resource rights of Indigenous Peoples and local communities. RRI leverages the capacity and expertise of coalition members to promote secure local land and resource rights and catalyze progressive policy and market reforms.

RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, D.C. For more information, please visit [www.rightsandresources.org](http://www.rightsandresources.org).

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## Executive Summary

Up to 2.5 billion people hold and use the world’s community lands, yet the tenure rights of women—who comprise more than half the population of the world’s Indigenous Peoples and local communities—are seldom acknowledged or protected by national laws. **Although gender norms and women’s forest tenure security vary widely across community-based tenure systems, this analysis concludes that national laws and regulations (referred to generally as “statutory laws”) on the rights of indigenous and rural women to inheritance, community membership, community-level governance, and community-level dispute resolution are consistently unjust, falling far below the requirements of international law and related standards.** The 30 low- and middle-income countries (LMICs) analyzed in this study are ill-positioned to meet their obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); non-binding international guidance such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT); and the Sustainable Development Goals, all of which necessitate the statutory recognition of women’s rights to community forests. Inadequate legal protections for the tenure rights of indigenous and rural women fail to reflect existing gender-equitable practices in indigenous and local communities, and enable other community practices that discriminate against women, thereby weakening women’s tenure rights, jeopardizing the livelihoods of women and their families, and threatening the advancement of entire communities.

### Methodology

This legal analysis examines the extent to which women’s rights are recognized by the national laws and regulations governing community-based forest tenure in 30 LMICs in Africa, Asia, and Latin America, encompassing 78 percent of forests in LMICs worldwide. Its aim is to increase the ability of governments, communities, civil society, international development agencies, and business actors to assess and address the gender sensitivity of statutory laws regulating community land and forest tenure. All 30 countries analyzed have ratified CEDAW, and 21 are Forest Carbon Partnership Facility (FCPF) REDD+ participant countries. The study analyzes the constitutions and statutory laws related to forests, land, natural resources, inheritance, and other subjects in the 30 LMICs to determine *if* and *how* women’s forest rights are considered in formally recognized **community-based tenure regimes (CBTRs)**. The CBTR is the study’s primary unit of analysis; it can be understood as a distinguishable set of national, state-issued laws and regulations governing “all situations under which the right to own or manage terrestrial natural resources is held at the community level.” Eighty CBTRs were identified and examined in the study.

The study builds on previous RRI assessments of the strength and content of the statutorily recognized forest rights of Indigenous Peoples and local communities by employing a “bundle of rights” approach that examines communities’ rights of access, withdrawal, management, exclusion, due process and compensation, and alienation, and the duration of those rights. The present study adopts a similarly rights-based approach to conceptualize the statutory rights of women in community-based tenure systems by addressing eight legal indicators essential for the protection of women’s forest tenure rights: **1) constitutional equal protection; 2) affirmation of women’s property rights; 3) membership; 4) inheritance in overarching laws; 5) inheritance in CBTR-specific laws; 6) voting (governance); 7)**

**leadership (governance); and 8) dispute resolution.** Three of these indicators—constitutional equal protection, affirmation of women’s property rights, and inheritance in overarching laws—are referred to as **overarching indicators** because they apply to *all* women in a country, regardless of whether they exercise property rights through a community-based tenure system. The five other legal indicators—membership, inheritance in CBTR-specific laws, voting, leadership, and dispute resolution—are **CBTR-specific indicators** that assess women’s rights at a community level in each CBTR analyzed.

The study does not assess community practices. Customary laws and norms originating from communities predominantly determine the access, use, and control over land within territories of Indigenous Peoples and local communities. The relationship between statutory laws, communities’ customary practices, and the realization of women’s tenure rights is complex and intersectional. It is shaped by the immense cultural diversity across communities, legal pluralism, religious influence, and the multitude of values on gender relations that are necessarily context specific. The inadequate statutory protections identified in this study may parallel gender-discriminatory practices in some communities, but, in other cases, community practices may be gender-equitable and may even provide women with more secure rights than national laws.

## Findings

CBTR-specific laws, which more closely regulate indigenous and rural women’s interactions with community forests, are markedly weaker than constitutional protections for women and the provisions enshrined in CEDAW. Of the 30 LMICs analyzed, 93 percent constitutionally prohibit gender-based discrimination and/or guarantee women equal protection under the law, and over half have overarching statutory laws that generally affirm women’s property rights. **Of the 80 CBTRs analyzed, however, adequate gender-sensitive provisions exist for only 3 percent of CBTRs in regard to women’s voting rights, 5 percent in regard to leadership, 10 percent in regard to inheritance, 18 percent in regard to dispute resolution, and 29 percent in regard to membership.** A similar disparity exists between constitutional protections and other overarching national laws addressing women’s inheritance rights. Although the constitutions of 28 countries recognize gender equality or prohibit gender-based discrimination, **less than one third of the 30 LMICs analyzed legally mandate that all daughters, widows, and unmarried women in consensual unions have equal rights to inherit alongside their male counterparts.**

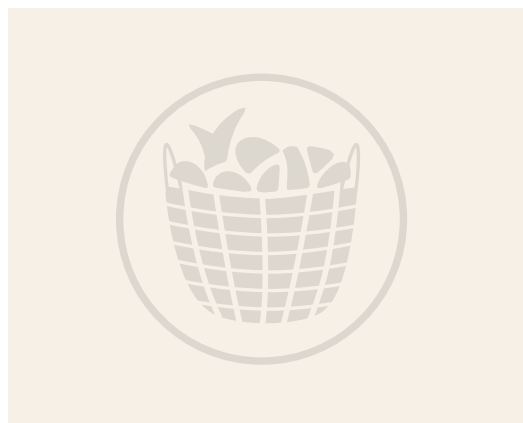
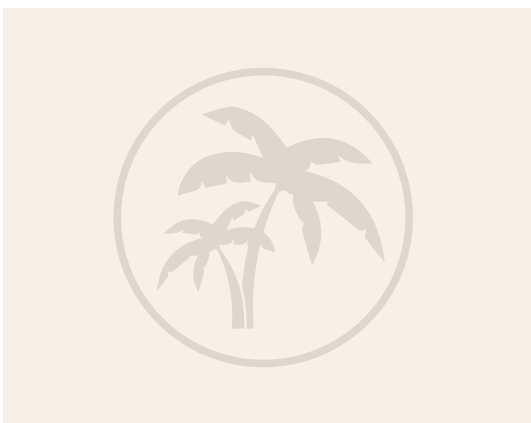
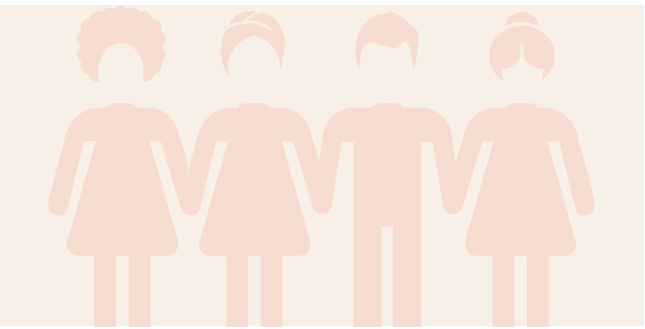
Stronger protections for women’s tenure rights are closely associated with more robust statutory recognition of community-based forest tenure. **CBTRs that provide avenues for communities to own forests, and those that are created with the express purpose of acknowledging community-based rights, provide the greatest protections for women.** CBTRs that provide a more limited set of forest tenure rights for communities and those motivated by conservation or use/exploitation purposes, provide decidedly weaker protections, with conservation-oriented CBTRs generally affording women even weaker statutory recognition than use/exploitation-oriented CBTRs. CBTRs identified within the 21 FCPF REDD+ participant countries reviewed provide levels of gender-specific protections for women’s community-level membership, inheritance, governance, and dispute resolution rights that are consistent with this study’s overall findings. Finally, countries reported as prohibiting economic forms of domestic violence, and particularly countries that extend these protections to unmarried women in consensual unions, contain stronger statutory protections for women’s CBTR-specific inheritance rights than do countries lacking domestic violence legislation.

**The study's findings at the regional level are mixed; no region provides consistently stronger legal protections for women across all eight of the indicators assessed.** Moreover, some regional findings may reflect the shared circumstances of the assessed countries rather than wider regional trends. Nevertheless, when compared with assessed countries in Asia and Latin America, the countries reviewed in Africa 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 three regions, Asian CBTRs provide the highest level of gender-specific protection for women's community-level inheritance, voting, and leadership rights. None of the analyzed Asian or African countries, however, recognize the overarching rights of unmarried women in consensual unions to inherit land through intestate succession, and between 45-50 percent of assessed countries in both regions establish plural intestate inheritance regimes that inequitably protect women's inheritance rights. Analyzed countries in Latin America provide the strongest protections for women's overarching inheritance rights and greater gender-sensitive recognition of women's community-level membership rights, but lag behind assessed countries in Africa and Asia with respect to women's community-level leadership and dispute resolution rights, as well as the affirmation of women's property rights in overarching laws.

## Implications

Given the tremendous gap between the rights of indigenous and rural women under international law and the rights currently recognized by governments, legal reforms are urgently needed to support this deeply marginalized group, which comprises over a billion people worldwide. There is a particularly pressing need for statutory reforms regarding women's governance rights, inheritance rights, and their rights in conservation- and use/exploitation-oriented CBTRs. Women need not—and should not be compelled to—choose between the recognition of their own tenure rights and those of their larger communities. The study shows that the legal advancement of women and of their communities can, and often do, go hand in hand. Much is at stake, but growing awareness of the importance of women's tenure rights, and increasingly collaborative efforts among governments, business actors, civil society, and the development community, suggest that protecting the tenure rights of indigenous and rural women is well within reach.







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