

Whose Water?

A Comparative Analysis of Indigenous, Afro-descendant, and Local Communities' Legally Recognized Freshwater Tenure Rights

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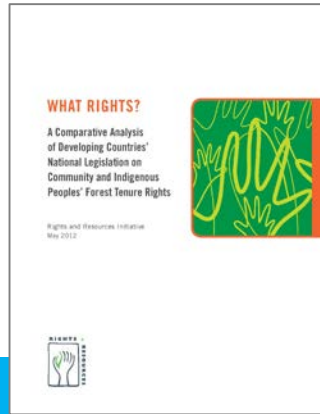
@ELIORG



RRI Tenure Data: Tracking Indigenous Peoples', Afro-descendants', local communities' & women's rights to lands, forests, & natural resources



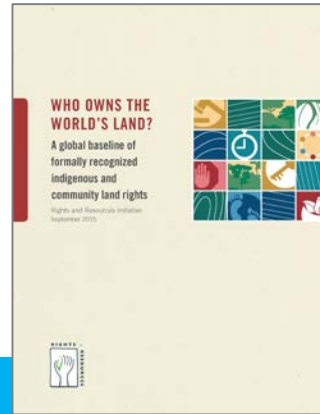
2002
**Who Owns the
World's Forests?**



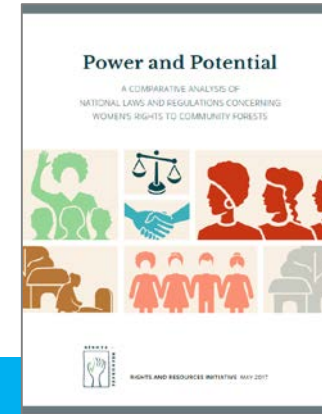
2012
What Rights?



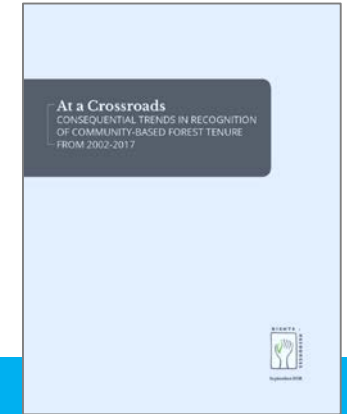
2014
**What Future For
Reform?**



2015
**Who Owns the
World's Land?**



2017
**Power and
Potential**



2018
At a Crossroads



Informing and influencing advocacy, policy-decisions, research, investment approaches, and other stakeholder engagement concerning the land, forest, water, and other natural resource rights of Indigenous Peoples, Afro-descendants, local communities, and women within those communities.



Indigenous Peoples and local communities customarily own and manage at least 50% of the world's lands.



But they only have legal titles to 10%.

Lessons Learned: Land and Forest Tenure

- Endorsement and application of community-based “land tenure”—alongside rigorous advocacy—have strengthened communities’ position within the political economy of land and forest governance and had tangible positive results.
- Secure community land tenure rights are widely accepted as a prerequisite for sustainable land governance and the realization of sustainable development and climate goals.
- Yet, the legally recognized rights comprising communities’ secure **freshwater tenure** have yet to be widely accepted or tracked over time.

Relationships between Indigenous Peoples, Afro-descendants, & local communities and their freshwater

- Community-based water tenure systems are complex, cross-sectoral, dynamic, and context-specific.
 - Customary or traditional water tenure systems and/or practices may or may not be recognized by statutory law.
- Community waters are under escalating pressure worldwide—which in turn exacerbate threats of displacement, violence, and conflict.
- Realization of communities'—and women within communities'—freshwater tenure rights is directly linked to their ability to realize basic human needs, and maintain food security and sustainable livelihoods, among other essential objectives.



Establishing a global baseline of community-based water tenure

15 countries analyzed are cumulatively home to over **1.1 billion rural inhabitants** and **over 25 percent of the freshwater resources found across Africa, Asia, and Latin America**:



Africa: Kenya, Liberia, Mali, Morocco, Zambia

Asia: Cambodia, India, Nepal, Vietnam

Latin America: Bolivia, Chile, Colombia, Mexico, Panama, Peru

Methodology

Community-Based Water Tenure Regime (CWTR): A distinguishable set of national laws and regulations governing all situations in which **freshwater rights of use** and at least either **governance** or **exclusion** are held at the **community level**.

National-Level Threshold Questions	Indicators	Additional Information
<ul style="list-style-type: none">• Human Right?• Transboundary Due Process?	<ul style="list-style-type: none">• Use (cultural/religious, domestic, livelihoods, commercial)• Transferability• Exclusion• Governance (rulemaking, planning and management, internal dispute resolution, external enforcement)• Domestic Due Process and Compensation	<ul style="list-style-type: none">• Duration• Prioritization/Hierarchy• Procedural Requirements
CWTR-Level Threshold Questions <ul style="list-style-type: none">• Customary Rights?• Dependent on Land Rights?• Women's Rights?		

Land-Water Nexus



Key Finding

- Communities' legal rights to freshwater are dependent on their recognized land or forest rights in **over 60% (25) of 39 CWTRs**.

Implication

- These 25 CWTRs establish consistently more adequate protections for communities' freshwater rights—including women's rights to use or govern community waters.
- Legislative "land-water nexus" serves as communities' only source of recognized water entitlements under the national laws of Cambodia, India, Liberia, and Mexico.
- Legislative harmonization and inter-sectoral collaboration are critical, with "community-based water tenure" as a conceptual foundation.

Women's Specific Rights to Use and Govern Community Waters



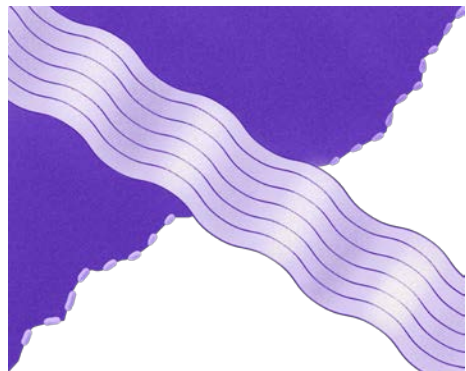
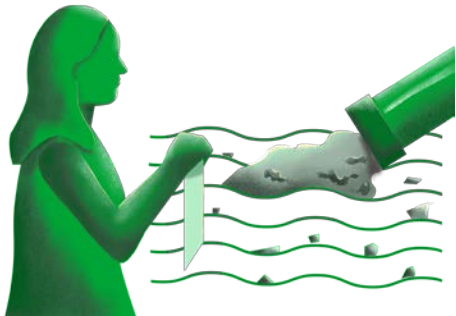
Key Finding

- Laws regulating community-based freshwater rights are typically gender-blind, with **just one-third (13) of 39 CWTRs** protecting women's specific rights to participate in freshwater governance:
 - **8 CWTRs** protect women's rights to participate in community-based decision-making processes **pertaining to community lands that include rights to govern freshwater**, and
 - **5 CWTRs** explicitly recognize indigenous and community women's rights to **govern water resources**.

Implication

- Explicitly acknowledge the freshwater rights of women within Indigenous, Afro-descendant, and local communities during legislative reforms.
- Raise communities' awareness of land-water nexus as basis for existing, gender-specific rights.

Communities' Rights to Protect their Freshwater: Exclusion, External Enforcement, and Transboundary Due Process



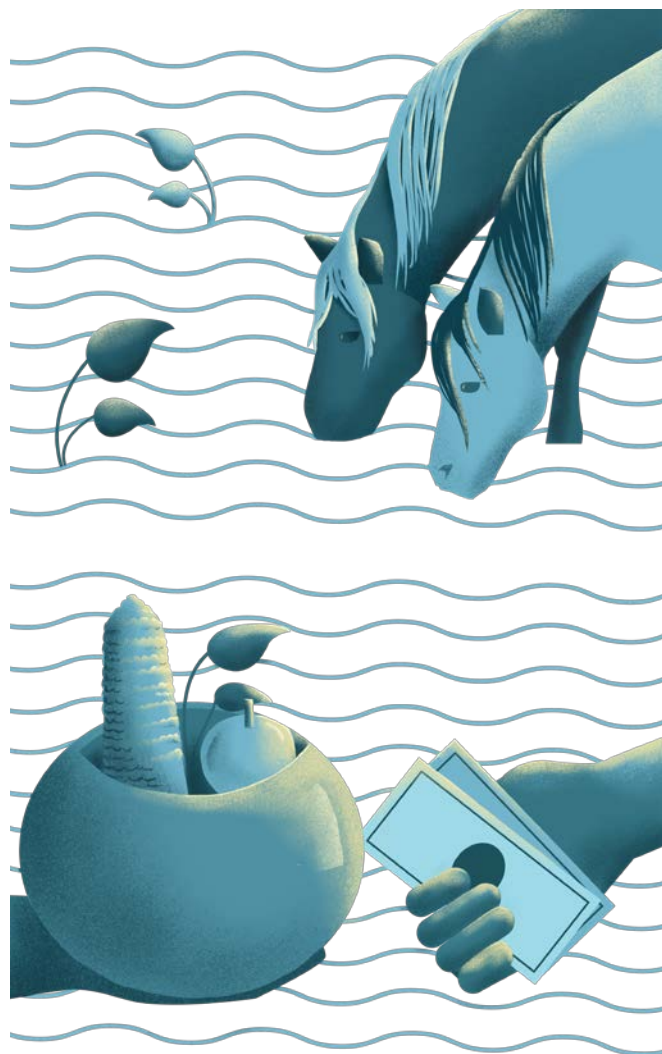
Key Finding

- **Lack of enforcement rights across 32 (82%) of 39 CWTRs** undermines communities' ability to protect their waters.
- **Exclusion rights, recognized in 24 (62%) of 39 CWTRs**, are closely aligned with the land-water nexus.
- **Absence of transboundary due process rights in 13 of 15 countries** renders communities' freshwater rights vulnerable to developments across a national border.

Implication

- Prioritize legal recognition of communities' freshwater rights of exclusion and enforcement.
- Raise communities' awareness of their existing rights to protect their freshwater resources.
- Promote inclusion of transboundary due process rights in agreements governing shared freshwater resources.

Livelihoods



Key Finding

- Cultural/religious and domestic water use rights are recognized without time limitations in **>90% of 39 CWTRs**.
- By contrast, governments limit the duration of communities' rights to use water for livelihood purposes in **7 (18%) of 39 CWTRs** and for commercial purposes in **17 (44%) of 39 CWTRs**. They may also impose procedural requirements:
 - **17 (44%) of 39 CWTRs**, require communities to obtain a permit for abstracting water for **livelihood needs**.
 - **29 (74%) of 39 CWTRs** require communities to obtain a **commercial use** permit to pursue community enterprises.

Implication

- Legal recognition of communities' rights to use water for livelihood and commercial purposes can enable them to pursue their own economic models of sustainable development.
- Modify and tailor permit requirements for livelihood and commercial uses to better meet the needs of both communities and the women within those communities.

Human Right to Water



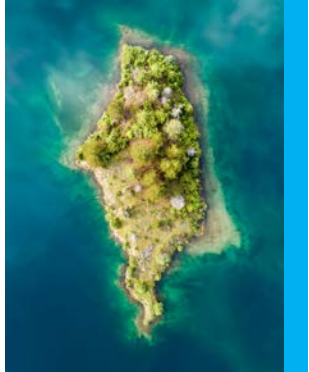
Key Finding

- The human right to water is legally recognized in **9 of 15 countries**, including:
 - 5 of 6 Latin American countries,
 - 3 of 5 African countries, and
 - 1 of 4 Asian countries.

Implication

- Prioritize universal legal recognition of the human right to water; promote interpretation that supports sufficient quantities for communities' livelihoods.
- Educate stakeholders on linkages between the human right to water and community-based water tenure to support effective implementation and enforcement.

Scaling Up Impacts: Increasing Solutions, Awareness, and Collaboration



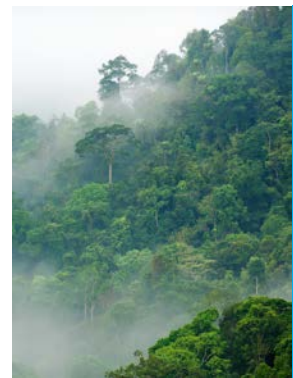
Accelerate **legislative and policy reforms recognizing the full bundle of community-based tenure rights and harmonizing laws across sectors**, ensuring alignment with the priorities of Indigenous Peoples, Afro-descendants, local communities, and women.



Strengthen **legal protections for Indigenous, Afro-descendant and community women's specific water use and governance rights**, addressing linkages between their land and water tenure.



Build consensus around "community-based water tenure" and integrate a tenure-based approach into decision-making processes related to forest, land, and freshwater governance.



Expand country coverage to facilitate data-driven advocacy and reforms, and enable monitoring of progress toward global human rights, health, sustainable development, and climate objectives.