



Freshwater Tenure Methodology: Legal Indicators and Assessment Criteria

The Freshwater Tenure Methodology underpinning “[Whose Water?](#)” and associated data presented on the [RRI Tenure Tool](#) compares and tracks national-level legal recognition of community-based freshwater rights within a framework designed to capture the legal entitlements that are most essential for securing community-based freshwater tenure.

The methodology adapts and builds on [existing RRI methodologies](#) for conceptualizing and tracking community land and forest tenure rights. This methodology conceptualizes community-based water tenure as a bundle of community-based freshwater rights that interact to support and promote communities’ physical survival, cultural vitality, livelihoods, and sustainable development.

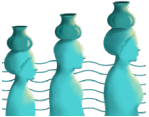


✓ = Yes ✗ = No C = Case-by-Case N/A = Not Applicable

National-Level Threshold Questions	
 <p>Human Right to Water?</p>	<p>Does national law recognize the human right to water?</p>
✓ or ✗	
 <p>Transboundary Due Process?</p>	<p>Where decisions or proposed developments in a given country related to a transboundary watercourse could impact the freshwater rights of users in another country sharing that watercourse, does international law require that all potentially impacted water users are notified in advance and consulted with respect to these decisions or proposed developments? In addition, do all water users have the right to judicially or administratively appeal decisions and actions that (potentially) impact water users’ freshwater rights?</p>
✓ or ✗ or N/A	

✓ = Yes ✗ = No C = Case-by-Case

The “community-based water tenure regime” (CWTR) is the primary unit of analysis for this data and is defined as “a distinguishable set of national-level, government-issued 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.”

Three CWTR-level threshold questions are intended to provide critical context within which the use, governance, and/or exclusion rights legally afforded to each CWTR should be understood. These three questions pertain to the recognition of:

CWTR-Level Threshold Questions	
 <p>Customary Right to Water?</p>	<p>Within each CWTR analyzed, does national law recognize communities’ customary water rights, laws, traditions and/or practices?</p>
✓ or ✗	
 <p>Land-Water Nexus?</p>	<p>Within each CWTR analyzed, is the recognition of any community water rights dependent on their land and/or forest rights?</p>
✓ or ✗	
 <p>Women’s Right to Community Waters?</p>	<p>Within each CWTR analyzed, does national law explicitly and affirmatively acknowledge women’s water rights to use and/or govern freshwater resources held by Indigenous Peoples, Afro-descendants, local communities, and/or other water user groups?</p>
✓ or ✗ or C	

✓ = Full Credit ■ = Partial Credit ✗ = No Credit C = Case-by-Case

Legal Indicators



Cultural/ Religious Use

Does national law recognize community-based rights to use freshwater for cultural and/or religious purposes?

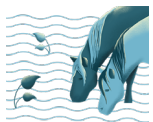
✓	The law guarantees communities' rights to use water for cultural and/or religious purposes, for an unlimited duration.
■	The law guarantees communities' rights to use water for cultural and/or religious purposes, for a limited time period.
✗	The law does not guarantee communities' rights to use water for cultural and/or religious purposes.
C	National law only recognizes the right in question for a portion of circumstances covered by the CWTR.



Domestic Use

Does national law recognize community-based rights to use freshwater for domestic purposes (i.e., those satisfying basic human needs, such as drinking water, washing, food preparation, and sanitation necessary for subsistence/survival)?

✓	The law guarantees communities' rights to use water for domestic purposes, for an unlimited duration.
■	The law guarantees communities' rights to use water for domestic purposes, for a limited time period.
✗	The law does not guarantee communities' rights to use water for domestic purposes.



Livelihood Use

Does national law recognize community-based rights to use freshwater for livelihood purposes (i.e., small-scale/household-level productive uses such as irrigation for agriculture, fisheries, brickmaking, or similar) that satisfy needs beyond subsistence/survival, but that do not qualify as "commercial purposes" as defined below?

✓	The law guarantees communities' rights to use water for livelihood purposes, for an unlimited duration.
■	The law guarantees communities' rights to use water for livelihood purposes, for a limited time period.
✗	The law does not guarantee communities' rights to use water for livelihood purposes.



Commercial Use

Does national law recognize community-based rights to use freshwater for commercial purposes, where "commercial purposes" is defined as the use of water as an input for generating income at a level higher than is necessary to maintain livelihoods?

✓	The law guarantees communities' rights to use water for commercial purposes, for an unlimited duration.
■	The law guarantees communities' rights to use water for commercial purposes, for a limited time period.
✗	The law does not guarantee communities' rights to use water for commercial purposes.



Transferability

Does national law recognize communities' right to sell, lease, or otherwise transfer any of their rights to freshwater?

✓	National law guarantees a transferability right.
✗	National law does not guarantee a transferability right.
C	National law only recognizes the right in question for a portion of circumstances covered by the CWTR.



Exclusion

Under national law, do communities have the right to exclude any third parties (such as individuals, groups, or other entities) from freshwater resources?

✓	The law guarantees communities the right to exclude third parties from accessing and using freshwater resources.
✗	The law does not guarantee an exclusion right.
C	National law only recognizes the right in question for a portion of circumstances covered by the CWTR.



**Rulemaking
(Governance)**

Does national law recognize communities' right to establish rules determining who can access/use freshwater and freshwater resources under the communities' control?

✓	The law guarantees the right to rulemaking with respect to freshwater resources.
✗	The law does not guarantee this right.



**Planning and
Management
(Governance)**

Does national law recognize communities' right to make decisions pertaining to the use(s) and protection of water/water resources, water allocation, and/or water infrastructure (i.e., planning), and to implement plans concerning freshwater water use, development, protection, allocation, and water infrastructure, in accordance with applicable community-based rules (i.e., management)?

✓	The law guarantees communities' rights concerning freshwater resource planning and management.
■	The law guarantees either planning or management rights regarding freshwater resources, but not both.
✗	The law does not guarantee either right.



**Internal Dispute
Resolution
(Governance)**

Does national law recognize communities' right to utilize community-based mechanisms/rules to resolve internal freshwater conflicts?

✓	The law guarantees communities the right to settle internal disputes related to water according to community-based laws/rules.
✗	The law does not guarantee this right.
C	National law only recognizes the right in question for a portion of circumstances covered by the CWTR.



**External
Enforcement
(Governance)**

Does national law recognize communities' right to impose penalties on external actors who violate community-based rules?

✓	The law guarantees communities' right to impose penalties on external actors who violate community-based rules.
✗	The law does not guarantee communities' right to impose penalties on external actors who violate community-based rules.
C	National law only recognizes the right in question for a portion of circumstances covered by the CWTR.



**Domestic
Due Process
(Prior Notice,
Consultation
and Appeal)**

Does national law require that communities are notified in advance and consulted when decisions or proposed developments related to a freshwater resource within that focus country could impact their freshwater rights? Does the national law of the same focus country recognize the rights of communities within that country to judicially challenge the government's decisions/actions to extinguish all or some of communities' freshwater rights?

✓	National law guarantees communities' right to prior notice and consultation regarding decisions or proposed developments within the focus country that could impact communities' freshwater rights, as well as communities' right to judicially appeal the government's decisions/actions to extinguish all or some of communities' freshwater rights.
■	National law guarantees some but not all of the following rights: prior notice and consultation regarding proposed developments or decisions within the focus country that could impact community freshwater rights, and rights to appeal the governments' decisions/actions to extinguish all or some of communities' freshwater rights.
✗	National law does not guarantee rights of prior notice, consultation, or appeal.



**Domestic
Compensation**

In the context of domestic situations involving the potential revocation of freshwater rights, does national law recognize that communities are entitled to compensation from the government and any private entities that are responsible for infringing upon or extinguishing their freshwater rights?

✓	National law enables communities to seek and receive compensation for a loss or infringement of their freshwater rights caused by the government or a private entity.
■	National law enables communities to seek compensation for a loss or infringement of their freshwater rights caused by either the government or a private entity.
✗	National law does not guarantee any compensation right.
C	National law only recognizes the right in question for a portion of circumstances covered by the CWTR.