

BOLIVIA

May 2012



1.0 | Territorio Indígena Originario Campesino (Original Peasant Indigenous Territory)

	Rating	Rationale
General Description	Territorio Indígena Originario Campesino (TIOC)(Original Peasant Indigenous Territory) is defined as an ancestral territory where common lands or a community of origin was constituted. These territories can acquire legal recognition through the agrarian authority, as established by the provisions in Articles 393 through 404 and by the second part of the seventh transitional provision of the Constitution (Art. 6, Law N° 031/2010). All Tierras Comunitarias de Origen (TCO)(Peasant Indigenous Territories) are to be converted to TIOCs (Art. 293, Bolivian Constitution, 2009). We consider the articles related to TCOs in the case of legislation preceding the new constitution (e.g. Law N° 1.715/1996; Law N° 3545/2006, and Forestry Law 1700/1996).	
Legal documents consulted:	Article 403 of the Bolivian Constitution of 2009; National Service of Agrarian Reform Law N° 1.715/1996; Law N° 3545/2006; Forestry Law N° 1700/1996; Supreme Decree N° 0726/2010; Supreme Decree N° 29.215/2007; Supreme Decree N°27572/2004	
Legislation confers rights to:	Indigenous communities and villages or original inhabitants with legal recognition or who are in the process of acquiring legal recognition	Article 100 (a), Supreme Decree N° 29.215/2007
Access	1	There are no restrictions on the use of forest resources for subsistence (Art. 32, Forest Law, 1996). The commercial use of natural resources in forest land is subject to the conditions set forth in a management plan (Art. 111, Supreme Decree N° 29.215/2007). Management Plans are defined by Article 3 and are regulated under Article 27 of the Forest Law, 1996.
Withdraw (NTFP)	2	
Withdraw (Timber)	2	

Management	2	Communities can manage forest resources within the limits of what is established in a Management Plan. There are several requirements for the approval of Management Plans (Title V, Chapter I, Forest Law, 1996).
Exclusion	1	Indigenous people have the exclusive right to benefit from forest resources within TCOs (Art. 32, Forest Law, 1996).
Alienation (Lease)	0	TIOC are indivisible, imprescriptible, indefeasible, inalienable and irreversible and not subject to tax on agricultural property (Art 394, Bolivian Constitution, 2009).
Alienation (Collateral)	0	
Alienation (Sale)	0	
Extinguishability	1	TIOC are indivisible, imprescriptible, indefeasible, inalienable and irreversible and not subject to tax on agricultural property (Art. 394, Bolivian Constitution, 2009). TCOs cannot be reverted to public domain (Art. 53, Law N° 1.715/1996; Art. 181, Supreme Decree N° 29.215/2007), except where biodiversity conservation or public interest development take precedence (Art. 59, Law N° 1.715/1996; Art. 6, Forest Law, 1996; Art. 236-238, Supreme Decree N° 29.215/2007). The community should be compensated in the case of expropriation (Art. 60-61, Law N° 1.715/1996).
Duration of Rights (Years)	Unlimited	TIOC are indivisible, imprescriptible, indefeasible, inalienable and irreversible and not subject to tax on agricultural property (Art. 394, Bolivian Constitution, 2009).
General Comments	Article 403 of the Bolivian Constitution of 2009 has strengthened the rights previously guaranteed to indigenous and peasant communities by the Agrarian Reform Law (Law N° 1.715/1996). According to the new Constitution (Art. 293, Bolivian Constitution, 2009) the TCO are to be converted to TIOC (Supreme Decree N° 727/2010). A TIOC that fulfills the requirements established by the Law N° 031/2010 may also be converted into a Gobierno Autónomo Indígena Campesino (Autonomous Indigenous Government Entity).	

2.0 | Propiedades Comunitarias (Communal Properties)

	Rating	Rationale
General Description		Communal Properties are properties collectively entitled to peasant communities and ex-haciendas that constitute the subsistence source for their owners. They are inalienable, indivisible, not reversible, collective, cannot be used as collateral, and are free from taxation (Art. 41(6), Law N° 1.715/1996). Peasant communities include: extractive communities, communities of farm wage workers in all forms of relationships that do dependency work, and settler communities (Art. 100, Supreme Decree N° 29.215/2007).
Legal documents consulted:		Article 394 of the Bolivian Constitution of 2009; National Service of Agrarian Reform Law N° 1.715/1996; Law N° 3545/2006; Forestry Law N° 1700/1996; Supreme Decree N° 29.215/2007; Supreme Decree N° 27572/2004
Legislation confers rights to:	Peasant communities, settlers, indigenous communities and villages and original dwellers	Article 100(b), Supreme Decree N° 29.215/2007
Access	1	There are no restrictions on using forest resources for subsistence (Art. 32, Forest Law, 1996). The commercial use of natural resources in forest land is subject to the conditions set forth in a management plan (Art. 111, Supreme Decree N° 29.215/2007). Management Plans are defined by Article 3 and are regulated under Article 27 of the Forest Law.
Withdraw (NTFP)	2	
Withdraw (Timber)	2	
Management	2	Communities can manage forest resources within the limits of what is established in a Management Plan. There are several requirements for the approval of a Management Plan (Title V, Chapter I, Forest Law, 1996).
Exclusion	1	The rights are exclusive. "The title allocation will be granted free of charge exclusively to peasant communities. Land allocation to human settlements will be made exclusively to such organizations (...)" (Art. 42(ii), Law N° 1.715/1996).
Alienation (Lease)	0	Communal Properties are inalienable (Art. 41 (6), Chapter 1, Law N° 1.715/1996).
Alienation (Collateral)	0	
Alienation (Sale)	0	
Extinguishability	1	Communal Properties cannot be reverted to public domain (Art. 53, Law N° 1.715/1996; Art. 181, Supreme Decree N° 29.215/2007), except where biodiversity conservation or public interest development take precedence (Art. 59, Law N° 1.715/1996; Art. 6, Forest Law, 1996; Art. 236-238, Supreme Decree N° 29.215/2007). The community shall be compensated in the case of expropriation (Art. 60-61, Law N° 1.715/1996).
Duration of Rights (Years)	Unlimited	Communal Properties are imprescriptible (Art. 41 (6), Chapter 1, Law N° 1.715/1996).

3.0 | Títulos Comunes para Comunidades Agro-Extractivas (Norte Amazónico) (Communal Titles for Agro-Extractive Communities in the Northern Amazonian Region)

	Rating	Rationale
General Description	Communal Titles for Agro-Extractive Communities refers to properties collectively entitled to peasant communities of the Northern Amazonian Region. These properties are inalienable, indivisible, irreversible, collective, tax-exempt and cannot be used as collateral. This regime applies only to agro-extractive families in the Northern Amazonian Region. In other parts of Bolivia, where people live on Communal Properties, the area does not exceed 50 ha per family. But in the Northern Amazonian Region communal titles extend over at least 500 ha per family. In practice, these areas operate as TCO, but they are concerned with specific communities and not ethnic groups. In the implementation process, the trend has been to favor individual or family use of each 500 ha to the detriment of collective use (Written comments by Arteaga).	
Legal documents consulted:	Article 394 of the Bolivian Constitution of 2009; National Service of Agrarian Reform Law N° 1.715/1996; Law N° 3545/2006; Forestry Law N° 1700/1996; Supreme Decree N° 29.215/2007; Supreme Decree N° 27572/2004	
Legislation confers rights to:	Individual persons or collectivities who entered peacefully into an area and carried out activities to benefit from natural non-timber forests resources for at least 5 years before the enactment of the Forestry Law	Art. 20 and 24, Supreme Decree N° 27572/2004
Access	1	Traditional resources users have the right to forest concessions and benefit from non-timber forest resources. (4th final disposition, Supreme Decree N° 29.215/2007; Art. 23, Supreme Decree N° 27572/2004). The exercise of this right is conditional to a Management Plan (Art. 36, Supreme Decree N° 27572/2004).
Withdraw (NTFP)	2	There are no restrictions on using forest resources for subsistence (Art. 32, Forest Law, 1996). The commercial use of natural resources in forest land is subject to the conditions set forth in a management plan (Art. 111, Supreme Decree N° 29.215/2007). Management Plans are defined by Article 3 and are regulated under Article 27 of the Forest Law.
Withdraw (Timber)	0	Supreme Decree N° 27572/2004 regulates the use of NTFP and prohibits the concession of any Communal Titles for Agro-Extractive Communities to families who have the right to explore timber products. Therefore we have considered that there is no right to withdraw and benefit from timber resources under this regime.

Management	2	Communities can manage forest resources within the limits of what is established in a Management Plan. There are several requirements for the approval of a Management Plan (Title V, Chapter I, Forest Law, 1996; 4th Final Disposition, Supreme Decree N° 29.215/2007; Art. 36, Supreme Decree N° 27572/2004).
Exclusion	1	Communities have the explicit right to exclude others from accessing and benefiting from their land (Art. 42(ii), Law N° 1.715/1996; Art. 32, Forestry Law N° 1700/1996).
Alienation (Lease)	0	Specific regulation (Supreme Decree N° 27572/2004) does not mention a right to alienate. Since this regime is similar to Communal Properties, and Communal Properties are inalienable, (Art. 41 (6), Chapter 1, Law N° 1.715/1996) we consider there to be no alienation rights.
Alienation (Collateral)	0	
Alienation (Sale)	0	
Extinguishability	1	Specific regulation (Supreme Decree N° 27572/2004) does not mention a specific process for expropriation. We have considered that it is similar to the case of Communal Properties, which cannot be reverted to public domain (Art. 53, Law N° 1.715/1996; Art. 181, Supreme Decree N° 29.215/2007), except where biodiversity conservation and public interest development take precedence (Art. 59, N° 1.715/1996; Art. 6, Forestry Law, 1996; Supreme Decree N° 29.215/2007). The community should be compensated in the case of expropriation (Art. 60 and 61, Law N° 1.715/1996).
Duration of Rights (Years)	Unlimited	Specific regulation (Supreme Decree N° 27572/2004) does not mention a period of authorization. Since this regime is similar to the Communal Properties, and Communal Properties are imprescriptible (Art. 42 (6), Chapter 1, Law N° 1.715/1996) we have considered the rights to be unlimited.

4.0 | Agrupaciones Sociales del Lugar (ASL) (Location-Based Social Association)

	Rating	Rationale
General Description		Agrupaciones Sociales del Lugar (ASL)(Location-Based Social Associations) are collectives of people with legal personality, composed of traditional users, peasant communities, indigenous peoples and other users who use forest resources (...), formed and qualified according to the Law and regulations in order to be beneficiaries of concessions in areas designated for such purposes" (Art. 1, Supreme Decree 24453/1996). ASL are formed to benefit from forest concessions. In order to receive a forest concession, the ASL must present Management Plans. A forest concession is the administrative act by which the Forest Superintendent gives individuals or groups the exclusive right of exploitation of forest resources in a specifically defined area of public land (Art. 29, Forest Law, 1996).
Legal documents consulted:		Forestry Law N° 1700/1996; Supreme Decree N° 24453/1996

Legislation confers rights to:	Location-based communities organized by any of the legal recognition clauses described in the Law N° 1551 (April 20, 1994)	Article 24, Decree N° 27572/2004
Access	1	ASL are formed to benefit from forest concessions. A forest concession is the administrative act by which the Forest Superintendent gives individuals or groups the exclusive right of exploitation of forest resources in a specifically defined area of public land (Art. 29, Forest Law, 1996). ASLs have priority to obtain forest concessions to exploit NTFPs (Art. 31, Forest Law, 1996). If the ASL is exploring timber resources, it must develop a Management Plan which must be approved by the relevant authority (Art. 29 (II), Forest Law, 1996).
Withdraw (NTFP)	2	
Withdraw (Timber)	2	
Management	2	ASL can manage resources within the limits of what is established by a Management Plan. There are several requirements for the approval of a Management Plan (Art. 29, Forest Law, 1996; Title V, Chapter I, Forest Law, 1996; Art. 69-77, Supreme Decree N° 24453/1996).
Exclusion	1	ASL are formed to benefit from forest concessions. Forest concessions are, by definition, the exclusive right of exploitation of forest resources in a specifically defined area of public land (Art. 29 (a), Forest Law, 1996).
Alienation (Lease)	1	It is possible to make a subsidiary contract to transfer the right of use and benefit to another ASL for, at most, 10 years. However, there are many restrictions on doing so (Art. 79-82(d), Supreme Decree N° 24453/1996).
Alienation (Collateral)	n/a	The legislation does not mention a right to use the concession as collateral.
Alienation (Sale)	1	ASL can transfer the concession under several conditions (Art. 29, Forest Law, 1996; Art. 79-82(d), Supreme Decree N° 24453/1996; Hermosilla 2002, 10; Written comments by Arteaga).
Extinguishability	1	It is a concession and as such the rights are protected under the law. Article 29(h) and 34 (Forest Law, 1996) specifically guarantee this right.
Duration of Rights (Years)	40 years (extendable)	Article 29(c), Forestry Law N° 1700/1996