

GUATEMALA

May 2012



GENERAL COMMENTS

Indigenous Lands: Article 68 of the Guatemalan Constitution of 1985 provides that: "Through special programs and appropriate legislation, the State shall provide state lands to the indigenous communities that need them for their own development". In addition, the Guatemalan Government has ratified Convention N° 169 of the International Labour Organization relating to the rights of indigenous peoples. However, there is still no specific legislation to date implementing this constitutional provision or Convention N° 169 (Written comments by Chex and Cochoy).

1.0 | Concesiones Comunitarias (Community Concessions)

	Rating	Rationale
General Description		Organized communities with legal status may be granted a forest concession. A forest concession is a power granted by the State to Guatemalan citizens, individuals or legal entities that by their own risk conduct forestry activities in state-owned forests (Art. 4, Forest Act, 1996). Indigenous communities can only apply for concessions once they have acquired legal status. In practice this is a barrier to their procurement of concessions as the law requires them to act under other rules and regulations external to their institutional and organizational dynamics. Similarly, the law does not recognize traditional ways of managing the natural resources practiced by indigenous peoples. As a consequence, they must follow strict forest management rules which limit their access to forest resources (Written comments by Chex).
Legal documents consulted:		Forest Law of 1996; National Forest Registry Regulations, Resolution N° 1/43/2005; Regulation of the Forest Law, Resolution N° 4/23/1997; Protected Areas Law, Decree N° 4/1989

Legislation confers rights to:	Organized communities with legal status	Article 4 and 27, Forest Law, 1996
Access	1	Article 26 - 33, Forest Law, 1996
Withdraw (NTFP)	2	Concessions are granted for commercial purposes with the goal of conducting sustainable forest management. Each concession requires a Management Plan, an explanation of which must be presented during the tender offer. The Management Plan must include an environmental impact assessment and five-year operational plan (Art. 27 and 30, Forest Law, 1996). In practice, there may be a concession overlap, as the State can grant usufruct rights to other interests within the same area, allowing the harvesting of non-timber resources such as Xate and bubble gum (Gum Law, Decree N° 99/1996; Written comments by Elijah).
Withdraw (Timber)	2	
Management	2	The community prepares the Management Plan and the Instituto Nacional de Bosques (INAB)(National Forest Institute) is in charge of its approval (Art. 30, Forest Law, 1996). Regarding protected areas the Consejo Nacional de Áreas Protegidas (CONAB)(National Council of Protected Areas) has the responsibility of approving Management Plans (Art. 18-19, Protected Areas Law, 1989).
Exclusion	1	Given the competitive nature of the concession process, the rights provided under a concession contract are exclusive. However, there may be a concession overlap, as the State can grant usufruct rights to other interests within the same area, allowing the harvesting of non-timber resources such as Xate and bubble gum (Gum Law, Decree N° 99/1996; Written comments by Elijah).
Alienation (Lease)	0	The Forest Law does not give the concessionaire the right to transfer the rights granted or created by the concession contract to third parties (Forest Law, 1996; National Forest Registry Regulations, Resolution N° 1/43/2005).
Alienation (Collateral)	0	
Alienation (Sale)	0	
Extinguishability	1	A community forestry concession is made legal by the signing of a concession contract (Art. 21, National Forest Registry Regulations, Resolution N° 1/43/2005). As such, the State must follow the due process of law to extinguish such a contract.
Duration of Rights (Years)	Up to 50 years (renewable)	The term of a concession can last up to 50 years, depending on the time needed for forest regeneration. Two years prior the end of contract's term, communities can negotiate the renewal of the concession (Art. 30, Forest Law, 1996; Art. 21, Regulation of the Forest Law, Resolution N° 4/23/1997; Art. 23, National Forest Registry Regulations, Resolution N° 1/43/2005).

General Comments	<p>1. Whether it is an organized community or a logging company the process of applying for and receiving a forest concession are the same. The Forest Law mentions only that, under equal conditions, INAB will ensure that preference is given to legally organized community-based organizations (Art. 30, Forest Law, 1996). Despite the difficulties associated with the application process, several communities were granted forest concessions due to successful political organization and the support of NGOs, especially in the Petén region (12 until 2008, Larson et. al 2010, 53).</p> <p>2. In protected areas, such as the Maya Biosphere, concessions are regulated by the Ley de Áreas Protegidas (Protected Areas Law, 1989) and are awarded by the Consejo Nacional de Áreas Protegidas (CONAP)(National Protected Areas Council). This law does not mention communities specifically.</p>
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2.0 | Tierras Comunales (Communal Lands)

	Rating	Rationale
General Description	Communal Lands are lands owned or possessed by indigenous or peasant communities as collective entities, with or without legal personality. Additionally, these lands are part of those lands registered in the name of the State or municipalities, but which have traditionally been owned or held under communal regime (Art. 23, Land Registry Act, 2005). If during the land registry process ownership, possession or communal land tenure status can be determined, the Registro de Información Cadastral (RIC)(Cadastral Information Registry) will recognize the declaration and management of communal land and issue proper certifications, and if it is the case, order the registration of this land. The RIC will then complete a survey of the area, and calculate the area of the land. In any case, the RIC is subject to the Guatemalan Constitution and the Convention N° 169 of the International Labour Organization (Art. 65, Land Registry Act, 2005).	
Legal documents consulted:	Article 67 of the Guatemalan Constitution of 1985; Article 23 of the Land Registry Act of 2005; Forest Law, 1996; Regulation of the Forest Law, Resolution N° 4/23/1997; National Forest Registry Regulations, Resolution N° 1/43/2005; Law of Supplementary Titling, Decree N° 49/1979; Specific Rules for the Recognition and Declaration of Communal Land, Resolution N° 123-001/2009	
Legislation confers rights to:	Indigenous or peasant communities as collective entities (with or without legal personality)	Article 4 and 27, Forest Law, 1996. Indigenous communities are forms of communal organization, particular to indigenous peoples regardless of their formal legal status, with internal administration governed under its own rules, values, procedures and systems of legitimate authority (Art. 1(c), Specific Regulations, 2009). Peasant communities are forms of organization of indigenous or non-indigenous people, identified by their common necessities and organized to implement common projects and programs, ensuring their tenure rights, possession or ownership of the land (Art. 1(d), Special Regulations, 2009).
Access	1	Article 23 and 65, Land Registry Act, 2005

Withdraw (NTFP)	2	Subsistence consumption is allowed with a Family Consumption Permit. This permit allows the family to consume up to 15m ³ of wood per year exclusively for fuel wood and construction materials (Art. 46, Regulation of the Forest Law, Resolution N° 4/23/1997). Commercial use is dependent upon the acquisition of a license and the terms of the Management Plan. The license is the authorization to implement the Management Plan. Any logging, other than for the purposes of family consumption, voluntary plantation and agroforestry systems planted voluntarily, may only be carried out with a license from the Instituto Nacional de Bosques (INAB)(National Forest Institute). The license will be exclusively for the owner or person that lawfully possesses the land or forest area (Art. 49, Forest Law, 1996). Farming communities of any nature may apply for collective licenses. In order to obtain one they must prove conclusively, ownership or possession of the land, and representation of those presenting the application, in addition to meeting the other requirements of the Forest Law and other pertinent regulations (Art. 43, Regulation of the Forest Law, Resolution N° 4/23/1997).
Withdraw (Timber)	2	
Management	2	The owners of the land (in this case the indigenous and peasant communities) develop a Management Plan and INAB has the authority to approve it. A Management Plan is implemented by issuing licenses to land owners (Art. 48 and 49, Forest Law, 1996). Other than the Forest Law of 1996, there are no specific regulations for the management of communal land in Guatemala. A consequence of this has been that communities are governed by the standards used for other tenure schemes that differ from the traditional management practices normally used on communal land (Written comments by Elias).
Exclusion	1	Once ownership, possession or communal land tenure have been established the right of exclusion is applied. However, in practice, communities must make great efforts to monitor their land and preventing outsiders from extracting forest products (Written comments by Elias).
Alienation (Lease)	1	There is no legislation that specifically addresses the right to lease or use the rights of communities to forest resources as collateral. Nevertheless, communal tenure can be defined in principle as equivalent to individual private property, the only difference being that the exercise of these rights must be done collectively and not as individuals.
Alienation (Collateral)	1	Therefore, according to the principle that all are equal under the law, the right to lease should be allowed (Written comments by Cochoy). Furthermore, the Guatemalan Constitution of 1985 does not prevent the alienation of lands, whereas the Constitution of 1945 explicitly stated that lands were inalienable, imprescriptible. In practice, communities hold private contracts (formal or informal) through which they

		give rights to others. This has often meant that third parties end up claiming land rights for themselves based on the Decree N° 49/1979 (Written comments by Elias).
Alienation (Sale)	1	In the event that a forested property covered by a logging license is transferred to another owner, the license will be transferred to the new owner, who acquires the rights and obligations of the license (Art. 49, Forest Law, 1996).
Extinguishability	1	Logging licenses will be revoked when licensees do not comply with the required obligations to INAB, the stipulations of Title Nine of the Forest Law, or where the amount of lumber harvested exceeds the approved quota (Art. 49, Forest Law, 1996).
Duration of Rights (Years)	Unlimited	Article 23 and 65, Land Registry Act, 2005
General Comments	Based on Article 23 and 65 of the Land Registry Act of 2005 we have interpreted that land can be privately owned by indigenous or peasant communities, and as such, is governed by the rules concerning privately owned forests suitable for forestry as defined in the Forest Law. The process to establish Communal Land is regulated in detail by the Specific Rules for the Recognition and Declaration of Communal Land.	