Community-Based Water Tenure: A Comparative Legal Analysis of Indigenous and Local Communities’ Recognized Freshwater Rights

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RRI Tenure Data: Tracking Indigenous Peoples’, local communities’ & women’s rights to lands, forests, & natural resources

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, local communities, and women within those communities.
Indigenous Peoples’ and local communities’ water tenure is largely overlooked

• The endorsement and application of community-based “land tenure” has strengthened the position of IPs and local communities within the political economy of land and forest governance and had tangible positive results.

• Legally recognized rights comprising communities’ secure freshwater tenure have yet to be conceptualized, widely accepted, analysed, or tracked over time.

• Indigenous Peoples, local communities, and indigenous and community women are often unaware of—and unable to effectively assert—the bundle of rights necessary to ensure their access to available, clean, affordable, and acceptable water and sanitation.
Establishing a global baseline of community-based water tenure

15 countries analyzed across Africa, Asia, and Latin America are cumulatively home to over 1.1 billion rural inhabitants and comprise a part of 94 transboundary river basins:

**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*.

<table>
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<tr>
<th><strong>National-Level</strong></th>
<th><strong>Indicators</strong></th>
<th><strong>Additional Information</strong></th>
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| **Threshold Questions** | • Use (cultural/religious, domestic, livelihoods, commercial)  
• Transferability  
• Exclusion  
• Governance (rulemaking, planning and management, internal dispute resolution, external enforcement)  
• Domestic Due Process and Compensation | • Duration  
• Prioritization/Hierarchy  
• Procedural Requirements |
| **CWTR-Level** |               |                           |
| **Threshold Questions** | • Human Right?  
• Transboundary Due Process?  
| **CWTR-Level** |               |                           |
| **Threshold Questions** | • Customary Rights?  
• Dependent on Land Rights?  
• Women’s Rights? |
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.
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.**
# 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 and local communities during legislative reforms.
- Raise communities’ awareness of land-water nexus as basis for existing, gender-specific rights.
Key Finding

- Governments frequently impose procedural requirements on communities’ rights to use freshwater for livelihood & commercial purposes in ways that can render freshwater inaccessible and unaffordable.
  - **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

- Modify and tailor permit requirements for livelihood and commercial uses to better meet the needs of Indigenous Peoples, local communities, and women within those communities.
# 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.
Support legislative and policy reforms recognizing the full bundle of community-based tenure rights, ensuring alignment with the priorities of Indigenous Peoples, local communities, and women.

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

Strengthen legal protections for indigenous and community women’s specific water use and governance rights, addressing linkages between their land and water tenure.

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.
Questions for Discussion

• How does or should this framework complement ongoing initiatives at local, national, or international scales?

• How can the findings from this analysis provide a basis for advocacy in countries or regions where you work?