

Community-Based Water Tenure:

A Comparative Legal Analysis of Indigenous and Local Communities' Recognized Freshwater Rights

Rights and Resources Initiative (RRI) and Environmental Law Institute (ELI)



Jessica Troell, JD

Senior Attorney

Director, International Water Program

Environmental Law Institute

Chloe Ginsburg

Tenure Analyst

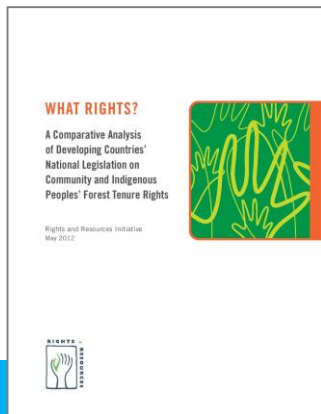
Rights and Resources Initiative



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



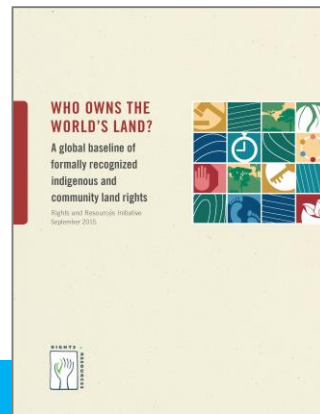
2002
**Who Owns the
World's Forests?**



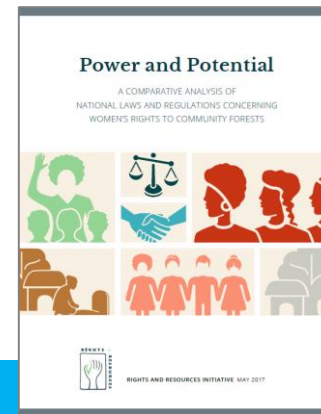
2012
What Rights?



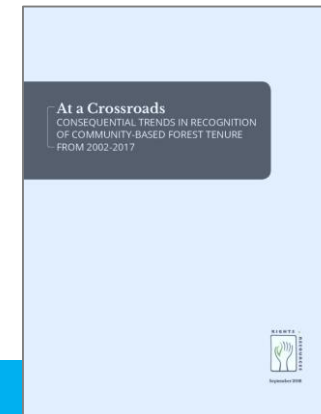
2014
**What Future For
Reform?**



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, 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 and positive results.
- Despite this, legally recognized rights comprising secure **freshwater tenure** for communities 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

- Began collaboration with Environmental Law Institute in 2016 to develop an analytical framework for conceptualizing the bundle of rights comprising communities' secure freshwater tenure and monitoring progress over time.
- Undertook highly consultative process involving the RRI Coalition, ELI's networks, and water experts to isolate the most critical legal entitlements comprising freshwater tenure, and the countries to analyze in the first iteration of this analysis.

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

Establishing a global baseline of community-based water tenure

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 (domestic, livelihoods, commercial, cultural)• Transferability• Exclusion• Governance (rule-making, planning and management, internal dispute resolution, external enforcement)• Domestic Due Process and Compensation	<ul style="list-style-type: none">• Duration• Prioritization/Hierarchy• Land/Water Nexus• Procedural Requirements
CWTR-Level Threshold Questions <ul style="list-style-type: none">• Customary Rights?• Dependent on Land Rights?• Women’s Rights?		

Global Findings and Implications

Key Findings

- Communities' freshwater rights are frequently dependent on their recognized land rights.
- Human right to water is inconsistently recognized across countries.
- Procedural requirements for domestic and livelihood uses are infrequently tailored to communities' needs and can render freshwater inaccessible and unaffordable.



Implications

- Legislative harmonization and inter-sectoral collaboration are critical, with “community-based water tenure” as a conceptual foundation.
- 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.
- Modify and tailor permit requirements for domestic and livelihood uses to better meet the needs of Indigenous Peoples, local communities, and women within those communities.

Global Findings and Implications Cont'd

Key Findings

- Laws regulating community-based freshwater rights are typically gender-blind.
- Gender-specific protections, where they exist, primarily relate to governance rights, and the majority emanate from CWTRs with a land/water nexus.



- Communities' rights to rule-making, planning and management are broadly recognized, but lack of enforcement rights undermine communities' protection of territorial waters.



- Absence of transboundary due process rights renders communities' freshwater rights unprotected when threatened by developments across a national border.



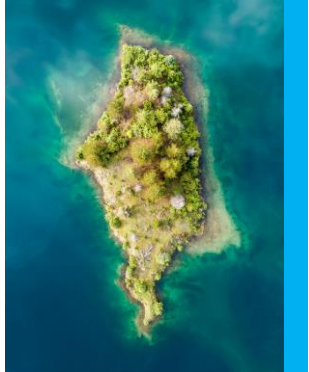
Implications

- Explicitly acknowledge the specific freshwater rights of women within indigenous and local communities when reforming legislation.
- Prioritize legal recognition of gender-specific **water** rights and raise communities' awareness of land/water nexus as basis for existing, gender-specific rights.

- Explicit recognition of **water** governance rights is critical where the land/water nexus is the basis for rights.
- Prioritize legal recognition of these rights. Raise communities' awareness of existing rights of exclusion, dispute resolution, and domestic due process/compensation.

- Promote inclusion of transboundary due process rights in agreements governing internationally-shared freshwater resources.

Scaling Up Impacts: Increasing Solutions, Awareness, and Collaboration



Expand country coverage in future updates and **build consensus around “community-based water tenure”** to foster harmonized approaches for recognizing community-based resource rights



Build upon existing analysis to further explore particular elements of the methodology



Disseminate analysis to support data-driven advocacy and capacity building efforts to facilitate national legal reforms as well as international guidance



Build bridges and foster collaboration among stakeholders working in the water, forest, land, gender, and other related sectors