Panel 2: Rights to Forest and Common Lands & Rural Land Use Regulations

LGI 2.1 Rights to forest and common lands

<table>
<thead>
<tr>
<th>Dimension 2.1.1</th>
<th>Forests are clearly identified in law and responsibility for use is clearly assigned.</th>
</tr>
</thead>
</table>

Instructions:
Justify how the tenure typology was used to compute your ranking.

Example (Moldova)

<table>
<thead>
<tr>
<th>LGI-Dim</th>
<th>Topic</th>
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<tbody>
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</table>

The forestry estate areas in public property of the country managed by Moldsilva Agency are defined and reflected in the annual land records as well as in the records covering 10-year forestry land use projects, which record disputes and uses. Every year, these areas are subject to substantive inspections of the status of guarding against forestry crimes (illicit logging, poaching, illicit change of the holders, owners and destination of land lots). Based on respective inspections, actions are initiated in court institutions. Unfortunately, the demarcation of the forest estate boundaries has not been carried out until now. This has been due to the lack of funds and imperfect legislation, which says that such activities shall be carried out only by the institutions of the ALRC. The lack of demarcation of boundaries confirmed through the issuance of ownership titles allows for boundary infringements by neighboring owners.

The areas of forest estate that are the property of local public administration authorities are not defined, and no inspection or monitoring of the status of protection against forestry contraventions and crimes is carried out. Specialized forestry staff responsible for the management of forest areas is missing. Forest management plans and specialized forestry records are missing. Various forestry contraventions and crimes are being committed.

Article 29 of the current Forestry Code lays out the rights and obligations of forest managers:

(2) The managers of forestry estate land areas shall be obligated to:

   a) ensure the regeneration, guarding, protection, improvement of the sanitary condition of forests, care of and increase in their productivity, conservation of forest biological diversity, organization of forest use and record keeping, and fulfillment of other obligations for the forestry estate administration purposes;

   b) rationally use the forest products;

   c) carry out works according to methods which would preserve the protective function of forests, as well as ensure optimal conditions for the regeneration of arboreta, growth of herb, food and technical plants.

Forest boundaries are to a large extent inspected and clearly delimited in case of the majority of forest categories while the ownership right is contested due to the lack of demarcation of boundaries and registration.
### Dimension 2.1.2

**Common lands are clearly identified in law and responsibility for use is clearly assigned.**

**Instructions:**
Justify how the tenure typology was used to compute your ranking.

**Example (Karnataka State, India)**

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Common lands broadly cover all lands under common use. There is no single category or classification of land use that corresponds to all of these lands. Variously, they are classified as forestland, grazing land, gram sabha land, gram panchayat land, or simply, “wasteland”, with the only common feature that unites all of them being that they are government-owned. Depending on the type of common land in every individual case, they may either be governed by forest laws or revenue laws. The Karnataka Forest Rights Act, 1963 does not explicitly refer to customary rights over the use of land, except in the context of permitting them in the case of private forests, without prejudice to the power of the State Government to legislate over them if the need arises. In the case of other forests, a forest settlement officer records and assigns rights over the use of forest land or produce to individuals. Though the Act is silent on the basis for the right claimed by an individual, though ostensibly these rights may be customary. However, the Act has the detrimental effect of reducing a customary right over the use of these lands to individualized lands, without recognizing them as common property resources.

Under Section 67 of the Karnataka Land Revenue Act, 1964, all lands that are not the property of individuals or an aggregate of persons, and all public roads, paths, rivers and streams, are declared to be the property of the State Government. Most common lands fall under this category. Section 71 empowers the Survey Officers and the Deputy Commissioner to set apart lands that are the property of the State Government for free pasturage for village cattle, for forest reserves or for any other public purpose. Specifically regarding certain types of common lands, Section 79 recognizes and ratifies privileges that are enjoyed by custom or any other order in respect of Kumki lands, Bane lands and Kane lands in South Kanara District. Betta lands and Hadi lands in North Kanara District, Kane and Sompopa Betta lands in Mysore Area, Jamma and Bane in Coorg and Motasthal wetlands in the Gulbarga areas, exempting them from rulemaking addressed at the regulation of the supply of firewood and timber for domestic or other purposes (subject to special orders). Thus, we see that these common lands are neither identified in law, nor does any statute clarify the responsibility for their use.

Chapter X of the Karnataka Forest Manual, 1976 recognizes customary privileges that forest villagers enjoyed, cautioning that these privileges are not to be understood as rights, classing them into two categories – general privileges that extend to all districts, and special privileges that apply to North Karnataka, Shimoga, Chikmagalur, Mysore and Hassan. The produce that is removed in the exercise of these privileges cannot be bartered or sold. Special privileges are granted for cultivation in areas that are otherwise restricted. A full list of extant privileges and villages to which it extends is found in the Manual. The enjoyment of these privileges cannot be understood as enforceable entitlements, and do not improve the security over the use of these lands.
Dimension 2.1.3  Rural group rights are formally recognized and can be enforced.

Instructions:
This dimension assesses the extent to which regulations concerning group rights in rural areas define how user groups can organize themselves, impose internal rules, interact with the outside, and call on external agencies to enforce rules:

Describe the criteria and procedures necessary to gain recognition for organizations and representation of rural groups. Describe specific rural groups that do not have formal recognition and why.
Justify how the tenure typology was used to compute your ranking.

Example (Malawi)

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Kinship is the basic means of acquiring land. Men in matrilineal groups and women in patrilineal societies do not have formal recognition of their group rights to land. Traditionally in matrilineal groups, primary rights to land belong to women, and are inter-generationally transmitted through the female line. The matrilineal system effectively strengthens female security on the land by according them the primary rights to land while simultaneously weakening those of the male counterparts who have only secondary rights enjoyed through the women they marry. There are also communally held lands, held by the clan or village headman (Otsuka, 1997). These include grave yards, grazing lands and other public places designated by the community leaders.

While customary authorities are still effective in regulating land access, the collegiate bodies that used to oversee their work are not. The result is a breakdown in accountability and a privatization of common lands. Similarly, while extended family groups continue to play an important role as land management units in many parts of rural Malawi, demographic change, urbanization, commercialization of land relations and other factors are pushing towards land management decisions being taken more and more at a household or even individual level. In these contexts, land scarcity may lead to a redefinition of the land claims of different groups within the extended family (for instance, along gender lines), with weaker groups becoming more vulnerable to losing their land access. It may also foster tensions between older generations traditionally controlling land access and younger generations left with more limited land access opportunities.

The tenure of most groups in rural areas is not formally recognized but there are ways for them to gain legal representation or organize themselves to gain group recognition. Group rights are recognized if people organize themselves into cooperatives and trusts which are registered as legal entities under the Cooperatives Act and the Trustees Act. The national land policy and the draft new land law has provisions for land management committees at village level. According to the land policy, to safeguard against unintended landlessness, all dispositions of customary land shall require approval and signature by the relevant head of the landowning group, the chief, and an independent member of a democratically elected Customary Land Committee dealing with the administration of customary land.

The National Land Policy suggests some tenure-related changes including elevating customary tenure to full common law status so that customary land will be categorized as private land. Once the new land policy is in force, the categories of land recognized in Malawi will be defined as government land, public land or private land. Private land is defined as both land under freehold tenure and customary land that has been allocated exclusively to a clearly defined community, corporation, institution, clan, family or individual (to be known as customary estates). Leasehold estates may be created out of any category of
land. Existing leaseholds on what was previously known as public land will be reclassified as leaseholds on government land. Although the land policy was approved in 2002, it lacks legal backing to implement the proposed measures as such the status quo remains until the new land bill is enacted into law.

**Dimension 2.1.4** Users' rights to key natural resources on land (including fisheries) are legally recognized and protected in practice.

**Instructions:**
Common lands may be used by several groups, each for a specific purpose, and at different moments throughout the year. An example is a pastoralist who uses grazing lands during specific periods – depending on rainfall- or migrant fisher folk. In customary systems these user rights are recognized and access to these resources is important for the production systems.

Describe these arrangements for the various important resources according to law and in practice. Take regional variations into account.

**Example (Odisha State, India)**

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<td>Users' rights to key natural resources on land (including fisheries) are legally recognized and protected in practice.</td>
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The user rights on key natural resources like land, water bodies, forest resources including fishing has been recognized under IFA 1927, OFA 1972, JFM resolution, FRA 2006, OGLS Act 1962 & OGLS Rules and the Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948, etc. Under the OGP (amended in 1997) Act 1964 Gram Sabha is competent to safeguard and preserve (among other things) the community resources and customary mode of dispute resolution consistent with the relevant law in force and in harmony with basic tenets of the Constitution and human rights.

The rights of way, right to water course or to use of water etc. are admitted and recorded in detail by the Forest Settlement Officer (FSO) in the process of notification of forests as RF. FSO also has to record the extent of grazing rights - specifying the number and description of the cattle which a claimant is, from time to time, entitled to graze in the forest, the season during which such pasture is admitted, and collect the quantity of timber and other forest produce. It will also record and authorize whether the timber or other forest produce be sold or bartered and ensure the continued exercise of the rights so admitted. FSO also is to make an order continuing in favor or such claimants a right of pasture or to forest produce to the nature and extent so admitted, during such seasons and within such portions of the proposed forests. In PFs generally right to collect small timber, fuel wood, fodder, grazing etc. are permitted unless specifically prohibited.

Rights and Concessions are described under all working plans in the concerned forest divisions and in the enumeration lists of final notification of reserve forests.

The rights and privileges are recorded individually for the dependent claimants of the fringe villages. Such prescribed privileges or concessions can be legally asserted by individuals whose names appeared in the enumeration lists but may not be with the identity of a group or collective.

The FRA 2006 recognizes (a) the rights right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers and community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such
intermediary regimes; (b) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries, and other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities; (c) rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities; (d) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.

The village forests have been protected under OFA 1972 and FCA 1980. Legal provisions are made for protection of the commons and user rights over village commons such as gochar, graveyards, ponds or any water bodies, fishing, village roads, worship places, samsan, playground under OGLS 1962 and OPLE 1972, OFA 1972, FRA 2006. Collection of fuel wood, MFP recorded in working plans and through JFM micro plans; right to water for irrigation from irrigation projects (Pani Panchayats).

However, there is no set or effective process for monitoring the continued enjoyment of the above users’ rights to key natural resources. The mechanism of protection is not enforced regularly as part of the legal process to protect in practice.

### Dimension 2.1.5 Multiple rights over common land and natural resources on these lands can legally coexist.

**Instructions:**
Natural resource management systems exists with groups having different rights over the same common area; one group, family or individual have rights over the land, while others have rights over the trees, water points and so on.

Describe these arrangements for the various important resources according to law and in practice. Take regional variations into account.

**Example (Odisha State, India)**

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Co-existence of rights of community or individuals loose relevance to some extent when land including common lands is acquired and forest lands are diverted for open caste mining largely happening in Odisha.

Due to inadequate implementation of required measured and ineffective monitoring water bodies used for other purposes by different users get contaminated or water table is depleted due to mining and results in impairment in enjoyment of rights of communities although legally they coexist. Similar is the case resulting from improper maintenance of transmission lines (death of elephants).

Legal provisions are made for protection of the commons and user rights over village commons such as gochar, graveyards, ponds or any water bodies, fishing, village roads, worship places, samsan, playground under OGLS 1962 and OPLE 1972, OFA 1972 & OGP (amendment) Act 1964.

There is no set of effective process for monitoring. The mechanism of protection is not enforced regularly as part of the legal process to protect in practice. However, only in rare cases they are implemented.

The rights over community forest resources (CFR) in any types of forest land and management rights over CFR by Gram Sabha under FRA 2006 and Coexistence of the rights of forest department under OFA 1972, FCA 1980 and Orissa Biological Diversity Act 2002 co-exist legally.

**Dimension 2.1.6**  Multiple rights over the same plot of land and its resources (eg. trees) can legally coexist.

**Instructions:**
For the same plot or parcel different rights can co-exist with for example one individual/ family having rights over tree, and others rights over the land; or rights of way, a water points and so on. Describe these arrangements for the various important resources according to law and in practice. Take regional variations into account.

**Example (Karnataka State, India)**

<table>
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<tbody>
<tr>
<td>Multiple rights over the same plot of land and its resources (eg. trees) can legally coexist.</td>
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</table>

Multiple rights exist over the same plot of land to an individual or an aggregate of individuals, insofar as certain resources in the land are deemed to vest with the state government, while others continue to remain with the occupant of the land. The Right to Trees under the Karnataka Land Revenue Act offers a case study. Under Section 74 and 75, the right to trees will vest in the occupant except when these trees are reserved by the Government or a Survey Officer, or are standing on Government property. The multiplicity of rights over the same plot arises when the Government specially reserves trees at the time of survey settlement. Such a situation also arises under Section 77 in the context of road-side trees. When trees are planted on lands held by a private owner under the orders and expense of the local authority, they vest in the State Government. In the event of such trees dying, or being cut down under a Tahsildar’s order, the timber becomes the property of the holder. The lopping of these trees can only be carried out with the authorization of the Tahsildar. The State Government, through the Deputy Commissioner is empowered to frame rules under Section 79 to regulate the availment of firewood and timber to trees reserved under Section 75. Hence, the existence of multiple rights over a property of land is an eminent possibility, though there is limited data to infer the efficiency of dispute resolution.
Dimension 2.1.7 Multiple rights over land and mining/other sub-soil resources located on the same plot can legally coexist.

Instructions:
This dimension is about ownership arrangements for sub-soil resources (mining in particular) vis-a-vis the plot and any loss of rights/disputes that may arise.

Example (Andhra Pradesh State, India)

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Where open cast/underground mining is to be taken up in forest lands, they are diverted for non-forestry purposes after obtaining permission of GoI as per FCA, 1980 (with amendments in 1988). Forest department continues to be legal owner while lease holders have rights over exploitation of resources within the given permissions (esp. time and quantity. In case of mining in government lands, they are leased to the lease holders). In case of private lands, they are acquired by the government and leased to lease holders. But cases of the agreements not respected by lease holders in practice also occurred leading to legal action by forest department/government and approaching courts by individuals.

When there are multiple rights, everyone has to respect them. In the event of violation, one is forced to assert his rights legally in a Court of Law, as there is no adequate and suitable mechanism for dispute resolution. It was noted that an assignment holder can be given ex gratia in the event that subsoil resources in his land are exploited affecting his rights adversely, as he is unaware or capable of exploiting the same on his own.

Dimension 2.1.8 Accessible opportunities exist for mapping and recording of group rights.

Instructions:
Describe laws and policies that allow registration and process to be followed.

Example (West Bengal State, India)

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</thead>
<tbody>
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</table>

All the forest land, for which community forest rights/patta have been distributed, was demarcated on the ground prior to vesting of rights under FRA 2006. However, correct maps of all such land demarcated on the ground could not be generated due to shortage of manpower and lack of initiatives to use GPS technologies by some of the DFOs. This may lead to disputes in future between the forest officials and the land right holders, due to lack of clarity of the land under possession. There is an urgent need to rectify the situation through a time-bound program.

Dimension 2.1.9 Boundary demarcation of communal land.

Instructions:
This dimension refers to the area of groups land that is being demarcated (see also tenure typology) and discusses also why demarcation is not complete.
**Example (The Gambia)**

<table>
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<tr>
<td>Rights to forest and common lands</td>
<td>2.1 9</td>
<td>Boundary demarcation of communal land.</td>
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</table>

Most communal land is not mapped. Only leaseholds are mapped. Less than 10% of all land in the rural areas (which are generally communally owned) is leased. The below table shows the number of lease properties in 4 out of 5 Regions.

<table>
<thead>
<tr>
<th>Region</th>
<th>WCR</th>
<th>LLR</th>
<th>CRR</th>
<th>NBR</th>
<th>URR</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of compounds /properties</td>
<td>106,156</td>
<td>7,364</td>
<td>-</td>
<td>16,883</td>
<td>14,061</td>
</tr>
<tr>
<td>No. of leasehold properties</td>
<td>9,074</td>
<td>127</td>
<td>-</td>
<td>1,070</td>
<td>477</td>
</tr>
</tbody>
</table>

The systematic demarcation, survey and registration of rights has never been a practice for communal lands, nor indeed for privately owned lands, the reason being that the Gambian system of registration is purely ‘voluntary’, unlike countries which practice a system of ‘Compulsory registration of Title’. However, some communal gardens have been mapped and rights registered – mostly as precursor for acquiring a loan or for attracting some form of sponsorship that requires Land Title. This is reflected in the low level of registration of regional leases. In most cases communal lands are not mapped until a transaction takes place, which normally is in the form of a lease being issued. According to the AGC Registry only 70 leases were registered for the Regions in 2012.

Most of the documentation for obtaining a lease is prepared by DLS including a cadastral plan which forms part of the lease. This document when signed is finally registered at the Deeds Registry of the AGC. Copies are kept at the Governor’s office, MLRG, and the owner also keeps an original copy.

When areas under customary tenure are declared State Lands all land owners are considered ‘deemed lessees of the State for 99 years. The MOL may stipulate a time frame within which formal titles should be applied for and issued to all deemed lessees within the area declared as State Land. However, this has not been done perhaps due to capacity constraints and reasons of practical necessity. So given the costs associated with the leasing process, owners would seek to acquire a Lease title only if, for example, there is a need to use the property as a collateral for a loan, otherwise the system continues to be voluntary.

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1 Area council rates records 2012.