



# Customs and Constitutions:

State recognition of customary law around the world

Katrina Cuskelly





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# Foreword

Since the Convention on Biological Diversity acknowledged the relevance of “traditional knowledge, innovations and practices of indigenous and local communities” for biodiversity conservation, the past two decades have witnessed a growing acknowledgement of the substantial role that customary law plays in regulating the use of natural resources in many countries. Indigenous peoples’ associations have become ever more effective advocates for recognition of customary rights to territory and resources and have increasing influence in international negotiations.

The role of customary practices in biodiversity conservation is explicitly acknowledged in the Aichi Targets adopted at the 10<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity in October 2010. Target 18 sets the goal that, by 2020, “the traditional knowledge, innovations and practices of indigenous and local communities, relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.”

IUCN’s Regional Environmental Law Programme, Asia, initiated this study – carried out entirely on a voluntary basis – in an attempt to better understand the degree to which customary practices and law that govern natural resources are recognized by individual nation States. The study found that more than 60% of the 190 constitutions reviewed provide at least some degree of recognition of customary law, and that only 20% specifically recognize customary law that governs land and natural resources.

Some countries that do not provide constitutional recognition of customary law do so by statute. While constitutional recognition was the primary focus of this study, a preliminary compilation of information on statutory recognition of customary law was carried out and is provided as well.

This effort benefitted from the input of members of IUCN’s Commission on Environmental Law and Commission on Environmental Economics and Social Policy.

We gratefully acknowledge the author, Ms. Katrina Cuskelly, who began this study as a volunteer intern with the IUCN’s Regional Environmental Law Programme, Asia, and continued and completed the work over the course of more than one year. Without her dedication and commitment, this study would not have been possible.

We hope that this study provides a basis for continuing research and, eventually, initiatives for constitutional and statutory reform, to appropriately recognize customary law governing natural resources, and to contribute to the security to the people whose lives it governs and who are dependent on the natural resources.

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Many thanks to all of the people who made comments to help improve this paper, namely Sergey Matveytchuk, Carl Bruch, Richard W. Emory, Jr., Ever Luis María Martínez Fernández and Muhammed Tawfiq Ladan. Thanks also to Zuura Akmatova for identifying and translating relevant provisions of the Kyrgyzstan constitution and Mark Christensen for helping with the constitution of New Zealand. I would particularly like to acknowledge the significant contributions by Brendan Tobin, who put much time and effort into providing detailed and insightful comments and further information to improve this paper.

# Introduction

There is no universally accepted definition of customary law. Black's Law Dictionary defines customary law as "customs that are accepted as legal requirements or obligatory rules of conduct, practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they are laws."<sup>1</sup> Tobin and Taylor add to this the recognition that such legal regimes are "dynamic and constantly evolving and often incorporate legal concepts and measures drawn from other legal systems".<sup>2</sup> Swiderska et al provide a still broader definition of customary law, stating that:

"Customary 'laws' include customary worldviews, principles or values, rules and codes of conduct, and established practices. They are enforced by community institutions, and can have sanctions attached. They are derived from natural resource use – some practices and beliefs acquire the force of law. They are locally recognised, orally held, adaptable and evolving."<sup>3</sup>

Historically, the relative influence of each of natural law, customary law and positive laws has fluctuated throughout time and space.<sup>4</sup> The strong emphasis on positive law in the field of international law during the 18<sup>th</sup> century led to a decline in the persuasion of natural law and customary law in the Western world. In particular, the doctrine of *terra nullius* served to reduce indigenous rights and delegitimize their customary law.<sup>5</sup>

Across much of the globe, there has been increasing awareness of the significant role of customary law in natural resource governance over the past two decades. Many authors suggest that recognition of customary law may be significant for the sustainable use of the resources of our planet. As Bosselman and Orebech comment, use of customary law may not always result in sustainability, as is also the case with statutory law, but its study can provide influential insight into methods of sustainably managing resources.<sup>6</sup> They describe sustainable development as the goal, with customary principles of natural resource management as instruments for achieving it.

Particularly in land and water allocation, and the settling of disputes related to them, studies have indicated that customary laws and institutions are the most influential and effective.<sup>7</sup> This influence may be at least partially due to the acceptance by the community that is inherent in customary law. The effectiveness may be explained by the

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<sup>1</sup> Garner, B. (ed.) (1999) *Black's Law Dictionary*, 7<sup>th</sup> ed., St Paul, Minnesota: West Publishing Company

<sup>2</sup> Tobin, B. and Taylor, E. (2009). *Across the Great Divide: A case study of complementarity and conflict between customary law and TK protection legislation in Peru*. Initiative for the Prevention of Biopiracy Research Documents, Year IV, No. 11. Lima: Sociedad Peruana de Derecho Ambiental. p. 7

<sup>3</sup> Swiderska, K., Argumedo, A., Song, Y., Li, J., Pant, R., Herrera, H., Mutta, D., Munyi, P., Vedavathy, S. (2009) *Protecting Community Rights over Traditional Knowledge: Implications of customary laws and practices. Key findings and recommendations 2005-2009*. London: IIED.

<sup>4</sup> Tobin, B. (2010). "The Law Giveth and the Law Taketh Away": The Case for Recognition of Customary Law in International ABS and Traditional Knowledge Governance'. *Policy Matters* 17: 16-25

<sup>5</sup> Ibid.

<sup>6</sup> Bosselman, F. and Orebech, P. (2005). 'Introduction'. In: Orebech, P. et al. *The Role of Customary Law in Sustainable Development*, pp. 1-12. New York: Cambridge University Press.

<sup>7</sup> Nkonya, L. K. (2006). 'Customary Laws for Access to and Management of Drinking Water in Tanzania'. *Law, Environment and Development Journal* 2(1): 50-66



fact that customary law, by its very nature, has evolved to suit the communities and environments in which it operates.

Many customary land tenure systems have evolved to include management methods that allow continued use of common-pool resources, in recognition of the potential for environmental change. In this context, 'common-pool' is not used to refer to open access resources but rather a system of communal property. In the case of resources that would otherwise be open access, customary rules often regulate access. There are numerous case studies of self-imposed restrictions under customary law that have successfully enabled continued use of common-pool resources.<sup>8</sup> When appropriately melded with western forms of land tenure, this would offer a more diverse and flexible range of tenure options as a basis for solving many resource management issues.<sup>9</sup>

Despite the growing awareness of the importance of customary law, State recognition of customary law is still lacking in many countries, and even where it is recognized there is often conflict between statutory regimes and customary law. This may be partially explained by the fact that customary law may be seen as a challenge to a nation's sovereignty.<sup>10</sup> Additionally, customary law has not historically been recognized by many scholars as a valid body of law, thereby decreasing the chance of recognition by policy-makers.

By its very nature, customary law gains its legitimacy from the acceptance of the people subject to it.<sup>11</sup> Therefore, in situations of conflict between customary law and statute, traditional communities are likely to view the customary law as having greater legitimacy and continue to use it. Communities may also continue using customary law where the statutory regime simply makes it impossible for them to survive using their current knowledge and capacity.<sup>12</sup> This may open them to the risk of a State-imposed penalty. It may also result in uncertainty of tenure and rights, actually hindering the sustainable management of resources. On the other hand, systems that effectively link customary institutions and rules with modern ones may improve natural resource management and have additional social benefits.<sup>13</sup>

In light of the above, this study aims to survey the current level and form of State recognition of customary laws and institutions. The main focus of this paper is an analysis of the recognition of customary law in national constitutions. See Annex A for a bibliography of constitutional provisions. Constitutionally enshrined recognition of customary laws and rights is particularly important because, in many States, statutory

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<sup>8</sup> See for example the case study of Sami fisherman in Norway in Callies, D., Orebech, P., and Petersen, H. (2005). 'Three Case Studies from Hawaii, Norway and Greenland'. In: Orebech, P. et al. *The Role of Customary Law in Sustainable Development*, pp. 43-89. New York: Cambridge University Press.

<sup>9</sup> Meinzen-Dick, R. S. and Pradhan, R. (2002). *Legal pluralism and dynamic property rights*. CAPRI Working Paper no. 22. Washington, D.C.: International Food Policy Research Institute

<sup>10</sup> Orebech, P. and Bosselman, F. (2005). 'The linkage between sustainable development and customary law'. In: Orebech, P. et al. *The Role of Customary Law in Sustainable Development*, pp. 12-42. New York: Cambridge University Press

<sup>11</sup> Tobin and Taylor, above n 2

<sup>12</sup> Callies, Orebech and Petersen, above n 6

<sup>13</sup> Benjamin, C. E. (2008). 'Legal Pluralism and Decentralization: Natural Resource Management in Mali'. *World Development* 36(11): 2255-2275

law prevails over conflicting customary law, unless there is constitutional protection.<sup>14</sup> However, it is acknowledged that States may recognise customary law in other domestic law and policy without constitutional provisions relating to customary law. The doctrine of Native Title is one such example, where countries without significant constitutional recognition of customary law acknowledge the rights of the traditional inhabitants of land.<sup>15</sup>

This study does not include an analysis of statutory provisions recognizing customary law. A preliminary bibliography of statutory provisions recognizing customary law is, however, provided in Annex B. An analysis of case law on customary law was also beyond the scope of this study.

A preliminary bibliography of relevant domestic legislation and literature is provided in Annex C. There is a large amount of literature on customary law, including much relevant to natural resource governance, which could not all be surveyed due to the limited time available for this study. The bibliographies annexed to this study should be considered as a guide, and a starting point for future research.

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<sup>14</sup> Tobin, B. (2004). *Customary law as the basis for Prior Informed Consent of Local and Indigenous Communities*. International Expert Workshop on Access to Genetic Resources and Benefit Sharing, Cuernavaca, 24-27 October 24-27 2004; Tobin and Taylor, above n 2

<sup>15</sup> The doctrine of Native Title has been established in countries including Australia, Canada, New Zealand, South Africa and the United States of America. Among these countries, only South Africa has broad recognition of customary law.

# International agreements

International law has taken customary law into account for more than 50 years, in conventions as well as non-binding declarations.

Multilateral environmental agreements have acknowledged traditional and cultural rights in relation to land and natural resources. The Convention on International Trade in Endangered Species of Wild Fauna and Flora<sup>16</sup> and the Convention on Migratory Species<sup>17</sup> both recognize, in their preambles, the value of wild animals from a cultural perspective. Similarly, the Ramsar Convention<sup>18</sup> acknowledges the cultural importance of wetlands. The Convention on Migratory Species preserves rights to traditional subsistence hunting.<sup>19</sup>

The Convention on Biological Diversity<sup>20</sup> (“CBD”) calls on parties to “protect and encourage customary use of biological resources in accordance with traditional cultural practices.”<sup>21</sup> Additionally, it calls for parties to respect for traditional knowledge, innovation and practices embodying traditional lifestyles relevant for the sustainable use of biological resources, and their wider application with the approval of the owners of the traditional knowledge, subject to national legislation.<sup>22</sup>

International human rights agreements and declarations contain provisions on indigenous rights relevant to natural resource governance. The Convention Concerning Indigenous and Tribal Peoples in Independent Countries (referred to as ILO 169)<sup>23</sup> calls for recognition of traditional occupation of or access to land, amongst other things. Article 15 specifically safeguards the rights of indigenous people to the natural resources

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<sup>16</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora. *Opened for signature 3 March 1973*. (Entered into force 1 July 1975.) The text of the Convention is available on-line: <http://www.cites.org/eng/disc/text.shtml#texttop> (accessed 6 September 2010).

Ratification status is available on-line: <http://www.cites.org/eng/disc/parties/index.shtml> (accessed 6 September 2010).

<sup>17</sup> Convention on Migratory Species. *Opened for signature 23 June 1979*. (Entered into force 1 November 1983) The text of the Convention is available on-line:

[http://www.cms.int/documents/convtxt/cms\\_convtxt.htm](http://www.cms.int/documents/convtxt/cms_convtxt.htm) (accessed 6 September 2010).

Ratification status is available on-line:

[http://www.cms.int/about/part\\_1st.htm](http://www.cms.int/about/part_1st.htm) (accessed 6 September 2010).

<sup>18</sup> Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar). *Opened for signature 2 February 1971*. (Entered into force 21 December 1975.) The text of the Convention is available on-line: [http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671\\_4000\\_0](http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0) (accessed 6 September 2010). Ratification status is available on-line:

[http://www.ramsar.org/cda/en/ramsar-about-parties/main/ramsar/1-36-123\\_4000\\_0](http://www.ramsar.org/cda/en/ramsar-about-parties/main/ramsar/1-36-123_4000_0) (accessed 6 September 2010).

<sup>19</sup> Convention on Migratory Species art III(5)(c)

<sup>20</sup> Convention on Biological Diversity. *Opened for signature 5 June 1992*. (Entered into force 29 December 1993.) The text of the Convention is available on-line:

<http://www.cbd.int/convention/convention.shtml> (accessed 6 September 2010).

Ratification status is available on-line:

<http://www.cbd.int/convention/parties/list.shtml> (accessed 6 September 2010).

<sup>21</sup> Convention on Biological Diversity art 10(c)

<sup>22</sup> Convention on Biological Diversity art 8(j)

<sup>23</sup> Indigenous and Tribal Populations Convention, 26 June 1957. International Labour Organisation C107. Revised in 1989 by ILO C169. Available on-line: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C107> (accessed 6 September 2010).

of their lands. The United Nations Declaration on the Rights of Indigenous Peoples<sup>24</sup> (UNDRIP) similarly recognizes the rights of indigenous people to traditional lands, including respect for their traditions, customs and land tenure systems. The Earth Charter<sup>25</sup> calls on all nations to uphold the rights of indigenous peoples and minorities. Its Principle 12.b affirms the rights of such people to their knowledge, land, resources and the practice of sustainable livelihoods. Other international declarations and agreements more specifically guarantee the right to own property.<sup>26</sup>

UNDRIP also calls for the self-government of indigenous people and recognition of their institutions, without limiting their right to participate in the running of the State.<sup>27</sup> ILO 169 similarly establishes people's right to retain their customs and institutions.<sup>28</sup> It also provides that, when parties apply national laws, it must be with due regard to the customs or customary laws of the peoples concerned.<sup>29</sup>

Most recently, the Nagoya Protocol on Access and Benefit Sharing<sup>30</sup> has created a specific obligation with respect to customary law in relation to conservation and sustainable use of biodiversity. Article 9 states that parties must, in accordance with domestic law, "take into consideration indigenous and local communities' customary laws, community protocols and procedures."

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<sup>24</sup> United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007, G.A. res. 61/295, U.N. GAOR, 107<sup>th</sup> Sess., U.N. Doc. A/RES/61/295 (2007), Article 26. Available on-line: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (accessed 6 September 2010).

<sup>25</sup> The Earth Charter was launched on 29 June 2000 in The Hague, The Netherlands. The text of the Earth Charter is available on-line: <http://www.earthcharterinaction.org/content/pages/Downloads%20For%2001%20The%20Earth%20Charter%20Text> (accessed 6 September 2010).

<sup>26</sup> Universal Declaration of Human Rights art 17.

<sup>26</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, Article 5(d)(v), 660 U.N.T.S 195. Adopted by the United Nations General Assembly on 21 December 1965, G.A. res. 2106, U.N. GAOR, 20<sup>th</sup> Sess., Supp. No. 14, at 47. Available on-line: <http://www2.ohchr.org/english/law/cerd.htm> (accessed 6 September 2010).

<sup>27</sup> Universal Declaration of Human Rights arts 4, 5 and 34.

<sup>28</sup> ILO 169, art 8.

<sup>29</sup> ILO 169, art 8.

<sup>30</sup> Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 29 October 2010. Tenth Meeting of the Conference of the Parties to the Convention on Biological Diversity. Available online: <http://www.cbd.int/nagoya/outcomes/> (accessed 12 December 2010)

# Constitutional provisions

This part analyses the constitutional provisions identified as relevant to customary law. It discusses the provisions first by region, then by aspect of customary law that they relate to. As mentioned above, this paper does not purport that constitutional recognition of customary law is a prerequisite for its recognition in other domestic legislation or policies. However, constitutional provisions provide a useful platform for beginning to study State recognition of customary law.

This study focused on locating provisions that expressly recognize customary law, or other terms referring to the same concept. It should be noted that a large number of constitutions contain anti-discrimination or equality provisions that could potentially apply to customary law. These provisions could be construed to preclude the application of customary law, where its application would create or exacerbate inequities. However, in many countries this is not the case, with constitutions stating that anti-discrimination provisions do not apply to laws providing for the application of customary law.<sup>31</sup> There may be other provisions that implicitly or indirectly affect customary law that are not discussed in this paper. Such provisions will need to be identified by constitutional scholars in individual countries. However, as these provisions do not directly relate to customary law, they are not discussed below.

It should also be noted that this study relied on English translations of many constitutions. In some circumstances, there was no official translation available. This may affect the exact wording in English of some of the provisions quoted below. It may also have led to the failure to identify relevant provisions due to an imprecise translation. For example, one unofficial translation was found to refer to 'common law' where the official translation used the words 'customary law'.

This study analysed 190 current national written constitutions worldwide, found in online databases. In some instances, unofficial translations have been used in this study due to the absence of official translations. Annex A identifies whether official or unofficial translations were used for any particular country. Out of a potential 190 constitutions, 115 were found to have relevant provisions.

## 1. Africa

The highest level of recognition of customary law is found in African constitutions, both in terms of the number of countries with relevant provisions and the breadth of aspects of customary law covered. Of 52 African constitutions analysed, 33 referred to customary law in some form. As discussed below, there is a high level of recognition of traditional and customary institutions, as well as a broad recognition of customary law in the courts and relating to land.

At the weakest level of recognition of customary law, a large number of African constitutions have provisions relating to the protection of culture or tradition. The wording

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<sup>31</sup> See for example, *Constitution of Botswana 1966* s 15(4)(d); *Constitution of Fiji 1997* s 38(7)(d),(8)(a); and *Constitution of the Republic of The Gambia 1997* s 33(5)(d)

of such provisions ranges from a duty on the State to protect and promote culture or traditions,<sup>32</sup> to a general right or freedom to culture or tradition,<sup>33</sup> or a more specific right or duty linked to language.<sup>34</sup> Often, these rights or duties are limited by the condition that such traditions or culture be consistent with the constitution itself and fundamental human rights.<sup>35</sup>

African constitutions also have by far the greatest recognition of customary family law. Of these, Chad's is most restrictive – allowing recognition of customary rules relating to marriages and inheritances only where both parties agree.<sup>36</sup> Ethiopia recognizes customary marriages and allows customary law to be applied in adjudication of disputes relating to personal and family law.<sup>37</sup> Five constitutions recognize customary marriages, in permitting government regulation of such.<sup>38</sup> A novel provision in the Namibian constitution also expressly provides for marriages under customary law to be recognized in order to prevent compulsion to testify against a spouse.<sup>39</sup> In one of the broadest provisions on customary family law, the South African constitution recognizes systems of personal and family law under any tradition, and marriages under such.<sup>40</sup>

Sixteen African constitutions contain provisions relating to institutional arrangements and customary law.<sup>41</sup> These range from a broad recognition of customary authorities or chiefs,<sup>42</sup> sometimes including a guarantee of non-abolition of such authorities,<sup>43</sup> to more specific arrangements providing for a specific body with specific functions in relation to customary law.<sup>44</sup> Ghana's constitution establishes a National House of Chiefs and Regional Houses of Chiefs with specific duties in relation to customary law, such as its

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<sup>32</sup> See for example, *Constitution of the Republic of Benin 1990* art 10; *Constitution of the Federal Democratic Republic of Ethiopia 1995* art 91(1); *Constitution of Kenya 2010* art 11; *Constitution of Mozambique 1990* art 115(1); *Transitional Federal Charter for the Somali Republic 2004* arts 1:1(3), 24(6); *Constitution of the Republic of Uganda 1995* art XXIV

<sup>33</sup> See for example, *Constitution of the Republic of Benin 1990* art 10; *Constitution of the Central Africa Republic 1995* art 7; *Constitution of Cote d'Ivoire 2000* art 7; *Constitution of the Republic of The Gambia 1997* s 32; *Constitution of the Republic of Ghana 1992* art 26(1); *Constitution of the Republic of Seychelles 1993* art 39(1); *Constitution of the Republic of South Africa 1996* s 31; *The Interim National Constitution of the Republic of Sudan 2005* art 47; *Constitution of the Republic of Uganda 1995* art 37

<sup>34</sup> See for example, *Constitution of the Republic of Benin 1990* art 11; *Constitution of Equatorial Guinea 1991* item 4; *Constitution of Kenya 2010* art 7

<sup>35</sup> See for example, *Constitution of the Federal Democratic Republic of Ethiopia 1995* art 91(1); *Constitution of the Republic of The Gambia 1997* s 32; *Constitution of the Republic of Ghana 1992* art 26(2); *Constitution of the Republic of Uganda 1995* art XXIV

<sup>36</sup> *Constitution of the Republic of Chad 1996* art 162

<sup>37</sup> *Constitution of the Federal Democratic Republic of Ethiopia 1995* art 34(4),(5)

<sup>38</sup> *Constitution of Kenya 2010* art 45; *Constitution of the Republic of Liberia 1986* art 23(b); *Constitution of the Republic of Malawi 1994* s 22(5); *Constitution of the Republic of Mozambique 1990* art 119; *The Constitution of the Republic of Namibia 1990* art 4(3)(b)

<sup>39</sup> *The Constitution of the Republic of Namibia 1990* art 12(1)(f)

<sup>40</sup> *Constitution of the Republic of South Africa 1996* s 15(3)

<sup>41</sup> Angola, Botswana, Democratic Republic of the Congo, Ghana, Lesotho, Madagascar, Namibia, Niger, Sierra Leone, Somalia, South Africa, Swaziland, Togo, Uganda, Zambia and Zimbabwe

<sup>42</sup> *Constitution of the Republic of Angola 2010* arts 223-225; *Constitution of the Democratic Republic of the Congo 2005* art 207; *Constitution of Madagascar 2010* art 2; *Constitution of the Republic of Mozambique 1990* art 118; *Constitution of the Republic of Niger 2010* art 167; *Constitution of the Republic of South Africa 1996* s 185; *Constitution of the Fourth Republic of Togo 1991* art 143; *Constitution of the Republic of Uganda 1995* art 246; *Constitution of Zambia 1996* art 127; *Constitution of Zimbabwe 1979* s 111

<sup>43</sup> *The Constitution of Sierra Leone 1991* s 72

<sup>44</sup> *Constitution of the Republic of Ghana 1992* art 272; *The Constitution of the Republic of Namibia 1990* art 102(5); *Constitution of the Republic of South Africa 1996* s 212; *The Constitution of the Kingdom of Swaziland 2005* s 251; *Constitution of Zambia 1996* arts 130, 131; *Constitution of Zimbabwe 1979* s 111

study, interpretation and evaluation.<sup>45</sup> The Council of Traditional Leaders under Namibia's constitution has a broader role of advising the President on all matters as referred to it, but particularly communal land.<sup>46</sup> Perhaps the most expansive provisions are those of the Swazi constitution. The preamble states that it is necessary to blend customary institutions with those of democratic society, and then the constitution sets out the traditional pillars of the monarchy<sup>47</sup> and states that traditional government is administered according to Swazi law and custom.<sup>48</sup> It also establishes a Council of Chiefs, responsible for advising the King on customary issues and considering Bills that could alter or affect customary authorities, cultural activity, customary courts or Swazi law or custom.<sup>49</sup> Similarly, Botswana provides for a House of Chiefs, which submits resolutions to the National Assembly on Bills affecting customary issues.<sup>50</sup> As discussed further below, Madagascar's constitution recognises a customary dispute resolution body.<sup>51</sup>

Instead of providing for separate traditional institutions, some constitutions make provision for representation in established government institutions. Kenya requires promotion of the representation of and participation by marginalised communities.<sup>52</sup> Sierra Leone provides for traditional boundaries to be taken into account in the determination of constituencies.<sup>53</sup> Along this vein, Somalia's charter requires the involvement of traditional leaders when appointing members of parliament and requires the Transitional Government to work with traditional elders in restoring peace.<sup>54</sup> Angola provides that the forms of local government organisation shall include traditional authorities.<sup>55</sup>

In addition to the institutional arrangements discussed above, many constitutions contain provisions relating to customary law in the courts. Some jurisdictions preserve, establish, or permit establishment of specific customary law courts<sup>56</sup> while others dictate the jurisdiction of courts in relation to customary law. For example, the Democratic Republic of the Congo states that courts shall apply customary law not contrary to public order<sup>57</sup> and Liberia requires courts to apply both statutory and customary laws.<sup>58</sup> In Zimbabwe, the law in force on 10 June 1981 is to be applied in the courts, subject to provisions relating to the application of customary law.<sup>59</sup> Customary law jurisdiction is sometimes

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<sup>45</sup> *Constitution of the Republic of Ghana 1992* arts 272, 274

<sup>46</sup> *The Constitution of the Republic of Namibia 1990* art 102(5)

<sup>47</sup> *The Constitution of the Kingdom of Swaziland 2005* s 227(2). For provisions relating to application of customary law in relation to traditional monarchs, see also *The Constitution of Lesotho 1993* ss 45, 46; and *Constitution of the Republic of South Africa 1996* s 143(1)

<sup>48</sup> *The Constitution of the Kingdom of Swaziland 2005* s 227

<sup>49</sup> *The Constitution of the Kingdom of Swaziland 2005* ss 115, 251

<sup>50</sup> *Constitution of Botswana 1966* ss 77, 85

<sup>51</sup> *Constitution of Madagascar 2010* art 2

<sup>52</sup> *Constitution of Kenya 2010* arts 56, 100

<sup>53</sup> *The Constitution of Sierra Leone 1991* s 38(3)

<sup>54</sup> *Transitional Federal Charter for the Somali Republic 2004* arts 30, 71(5)

<sup>55</sup> *Constitution of the Republic of Angola 2010* art 213

<sup>56</sup> See for example, *Constitution of the Federal Democratic Republic of Ethiopia 1995* art 78(5); *Constitution of the Republic of Malawi 1994* s 110(3); *Constitution of the Federal Republic of Nigeria 1999* ss 265, 280; *The Constitution of Sierra Leone 1991* s 120(4); *Constitution of the Republic of South Africa 1996* sch 6, s 16

<sup>57</sup> *Constitution of the Democratic Republic of the Congo 2005* art 153

<sup>58</sup> *Constitution of the Republic of Liberia 1986* art 65

<sup>59</sup> *Constitution of Zimbabwe 1979* s 89

expressly limited to civil cases, and excluded from operation in criminal cases.<sup>60</sup> South Africa restricts the courts in stating that when they develop customary law, it must be so as to promote the objects of the Bill of Rights.<sup>61</sup> The Nigerian constitution has added an integrative measure, requiring that some justices of the Supreme Court and Court of Appeal be learned in customary law.<sup>62</sup> Another form of integration is seen in the Sierra Leone constitution, which defines common law as including rules of customary law.<sup>63</sup> On the other hand, Swaziland removes certain matters of customary law from both the original and appellate jurisdiction of the High Court.<sup>64</sup> The Kenyan constitution uniquely recognises the need for courts and tribunals to consider traditional dispute resolution mechanisms.<sup>65</sup>

Madagascar's constitution recognises a customary dispute resolution body, named the Circle for the Preservation of Fihavanana (CPF)<sup>66</sup>, composed of elders and others appointed by the king. The CPF, uniquely, is tasked with the "prevention of crises and conflict of all kinds that could affect the ancestral virtues and values among Malagasys with a view to preserving national unity".<sup>67</sup> The CPF is to employ 'all the means possible' to avoid damage to internal societal links. In cases involving crimes or misdemeanours and the 'deterioration of Fihavanana', the CPF may establish committees to assist it. The CPF may also request the Government and Parliament to grant amnesty from statutory law penalties for persons alleged to have committed, or who have been found guilty of, "crimes, misdemeanours, errors and omissions that involve victims and a deterioration of Fihavanana".<sup>68</sup>

Importantly for natural resource governance, eleven of the African constitutions contain provisions relating to customary law and land.<sup>69</sup> In Ghana, although the land is actually vested in the stool<sup>70</sup> itself, there are limitations on the disposition and development of stool land<sup>71</sup>. Ghana's constitution also contains provisions related to compensation or resettlement in the case of compulsory acquisition of land resulting in displacement of a person holding customary tenure.<sup>72</sup> In Uganda customary title is an expressly recognized form of tenure.<sup>73</sup> Customary tenure in Uganda enables the holder to obtain a certificate of ownership and convert the title to freehold ownership by registering it.<sup>74</sup>

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<sup>60</sup> See for example, *Constitution of the Republic of Malawi 1994* s 110(3); *Constitution of the Federal Republic of Nigeria 1999* s 282; *Constitution of the Republic of Chad 1996* art 26

<sup>61</sup> *Constitution of the Republic of South Africa 1996* s 39(2)

<sup>62</sup> *Constitution of the Federal Republic of Nigeria 1999* ss 237(2)(b), 288

<sup>63</sup> *The Constitution of Sierra Leone 1991* s 170(2)

<sup>64</sup> *The Constitution of the Kingdom of Swaziland 2005* s 151(8)

<sup>65</sup> *Constitution of Kenya 2005* art 159

<sup>66</sup> 'Fihavanana' is a Malagasy word representing concepts of kinship, friendship and goodwill. Article 1 of the *Constitution of Madagascar 2010* describes fihavanana as "a framework of life that permits "living together" regardless of region, origin, ethnicity, religion or sex"

<sup>67</sup> *Constitution of Madagascar 2010* art 2

<sup>68</sup> *Constitution of Madagascar 2010* art 2

<sup>69</sup> *Constitution of the Republic of The Gambia 1997* s 22(4); *Constitution of the Republic of Ghana 1992* s 267; *Constitution of Madagascar 2010* art 39; *Constitution of Kenya 2010* art 63; *The Constitution of Lesotho 1993* s 7(6); *Constitution of the Republic of South Africa 1996* s 25(6); *The Constitution of the Kingdom of Swaziland 2005* s 26(6); *Constitution of the Fourth Republic of Togo 1991* art 141; *Constitution of the Republic of Uganda 1995* art 237(3); *Constitution of Zambia 1996* art 16(2)(y); *Constitution of Zimbabwe 1979* s 22(f)

<sup>70</sup> A 'stool' is a political unit (family, clan, confederation) in southern Ghanaian cultures

<sup>71</sup> *Constitution of the Republic of Ghana 1992* s 267

<sup>72</sup> *Constitution of the Republic of The Gambia 1997* s 22(4)

<sup>73</sup> *Constitution of the Republic of Uganda 1995* art 237(3)

<sup>74</sup> *Constitution of the Republic of Uganda 1995* art 237(4)



Zimbabwe, Lesotho and Swaziland provide exceptions to freedom of movement provisions where a customary law restricts a person's ability to reside in any area.<sup>75</sup> The Democratic Republic of the Congo and Togo recognise decentralised territories, including chiefdoms and territorial communities respectively, as having administrative freedom and managerial authority.<sup>76</sup> Kenya vests community land, including ancestral lands and lands traditionally occupied by hunter-gatherer communities, in the community and establishes a National Land Commission to encourage the application of traditional dispute resolution mechanisms in land conflicts.<sup>77</sup> Madagascar's constitution enables the Fokontany (villages) to take measures to prevent loss of their land, but also extends this to protection of the environment, lands traditionally used by cattle and ceremonial heritage.<sup>78</sup> However, this provision is limited to actions that do not "affect general interests and public order". The scope and modalities of these measures as well as the powers of the Fokonolona are determined by law.

Two African constitutions recognise rights to natural resources other than an interest in the land. Angola's constitution uniquely recognises and protects the right of rural communities to use and benefit from means of production in accordance with customary and State law.<sup>79</sup> Kenya's constitution requires the Parliament to enact legislation protecting ownership of indigenous plants and their use by Kenya communities and requires the State to protect indigenous knowledge of biodiversity.<sup>80</sup>

Of only three constitutions that contain provisions on the codification of customary law, two of them are in Africa. Chad's constitution provides that customary rules are applicable only in the communities they are recognized in until they are codified.<sup>81</sup> The most comprehensive requirement however, is in Ghana's constitution. There, the Regional House of Chiefs must compile customary law applicable to each stool or skin<sup>82</sup> and the National House of Chiefs is required to study, interpret and codify customary law.<sup>83</sup>

In many constitutions, a form of hierarchy can be identified. In a clear preference for statutory law, the Namibian constitution expressly provides that customary law may be repealed or modified by statute.<sup>84</sup> Similarly, Cote d'Ivoire, Niger and Togo establish that the law may establish procedures for certifying customs, and harmonising them with the constitution.<sup>85</sup> A large number of the constitutions prohibit customs that are contrary to some or all of the following: the constitution, statute, human rights, rights of women, natural justice, or public order, or other forms of customs that are deemed undesirable.<sup>86</sup>

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<sup>75</sup> *The Constitution of Lesotho 1993* s 7(6); *The Constitution of the Kingdom of Swaziland 2005* s 21(13); *Constitution of Zimbabwe 1979* s 22(f)

<sup>76</sup> *Constitution of the Democratic Republic of the Congo 2005* art 3

<sup>77</sup> *Constitution of Kenya 2010* art 63, 67

<sup>78</sup> *Constitution of Madagascar 2010* art 39

<sup>79</sup> *Constitution of the Republic of Angola 2010* art 92

<sup>80</sup> *Constitution of Kenya 2010* arts 11, 69

<sup>81</sup> *Constitution of the Republic of Chad 1996* art 161

<sup>82</sup> A 'stool' is a political unit (family, clan, confederation) in southern Ghanaian cultures, while this is called a 'skin' in northern Ghanaian cultures

<sup>83</sup> *Constitution of the Republic of Ghana 1992* arts 272(b), 274(3)(f)

<sup>84</sup> *The Constitution of the Republic of Namibia 1990* art 66(2)

<sup>85</sup> *Constitution of Cote d'Ivoire 2000* art 71; *Constitution of the Republic of Niger 2010* art 99; *Constitution of the Fourth Republic of Togo 1991* art 84

<sup>86</sup> *Constitution of the Republic of Angola 2010* art 7; *Constitution of the Democratic Republic of the Congo 2005* art 207; *Constitution of the Federal Democratic Republic of Ethiopia 1995* art 35(4); *Constitution of the Republic of Ghana 1992* art 26(2); *Constitution on Kenya 2010* s 2; *Constitution of the Republic of Liberia*

In Mozambique, the relationship between traditional authority and other institutions is simply left to be determined by the State.<sup>87</sup> The constitution of Swaziland provides for interpretation of customary law in a manner consistent with the constitution.<sup>88</sup> In a less onerous provision, the constitution of Malawi declares that the organs of the State shall have due regard to the Constitution in the application and development of customary law.<sup>89</sup> Sudan provides for an interesting relationship between custom and statute, stating that custom shall be the source of nationally enacted legislation and providing a solution if the majority of the residents of a particular state do not practice the custom embodied in a piece of legislation.<sup>90</sup> Swaziland provides some form of protection to customary laws, institutions and land by providing for a special procedure for adopting legislation that would affect them.<sup>91</sup>

There are many other miscellaneous provisions relating to customary law in many of the constitutions. Cameroon's constitution simply recognizes rights of indigenous populations, cultural rights and fundamental rights as recognized by customs.<sup>92</sup> As stated above, some constitutions contain provisions stating that laws are not to be considered discriminatory to the extent that they allow the application of customary law to its subjects.<sup>93</sup> A number also state that the right to legal representation does not apply to offences under customary law.<sup>94</sup> Other constitutions provide a definition of 'law' as including customary law or unwritten law.<sup>95</sup> In provisions allocating powers between levels of government, some countries allocate customary law or associated powers. South Africa gives concurrent jurisdiction to both national and provincial legislatures over customary law, traditional leadership and administration of indigenous forests.<sup>96</sup> Kenya's constitution provides for the equitable development of marginalised communities, which include traditional and indigenous communities not integrated into Kenyan life.<sup>97</sup> This includes the establishment of an Equalisation Fund which is to be used for providing basic services to marginalised areas.<sup>98</sup>

## 2. Meso and South America

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1986 art 2; *Constitution of the Republic of Malawi* 1994 ss 24(2), 200; *The Constitution of the Republic of Namibia* 1990 art 66(1); *The Constitution of the Republic of Rwanda* 2003 art 201; *The Interim National Constitution of the Republic of Sudan* 2005 art 32(3); *The Constitution of the Kingdom of Swaziland* 2005 s 252(2); *Constitution of the Republic of Uganda* 1995 art 2(2)

<sup>87</sup> *Constitution of the Republic of Mozambique* 1990 art 118

<sup>88</sup> *The Constitution of the Kingdom of Swaziland* 2005 ss 252(2), 268(1)

<sup>89</sup> *Constitution of the Republic of Malawi* 1994 s 10(2)

<sup>90</sup> *The Interim National Constitution of the Republic of Sudan* 2005 art 5(2),(3)

<sup>91</sup> *The Constitution of the Kingdom of Swaziland* 2005 s 115(6)

<sup>92</sup> *Constitution of the Republic of Cameroon* 1972 preamble

<sup>93</sup> *Constitution of Botswana* 1966 s 15(4)(d); *Constitution of the Republic of The Gambia* 1997 s 33(5)(d); *The Constitution of Lesotho* 1993 s 18(4)(c); *The Constitution of Sierra Leone* 1991 s 27(4); *Constitution of Zambia* 1996 art 23(4)(d); *Constitution of Zimbabwe* 1979 s 23(3)

<sup>94</sup> *Constitution of Zambia* 1996 art 18(12)(b)

<sup>95</sup> *Constitution of the Republic of The Gambia* 1997 s 7(e); *Constitution of the Republic of Ghana* 1992 art 11(2); *The Constitution of Sierra Leone* 1991 s 171; *The Constitution of the Kingdom of Swaziland* 2005 s 261; *Constitution of Zimbabwe* 1979 s 113; see also *The Constitution of Sierra Leone* 1991 s 170, which defines 'common law' as including customary law

<sup>96</sup> *Constitution of the Republic of South Africa* 1996 sch 4

<sup>97</sup> *Constitution of Kenya* 2005 arts 201, 204, 260

<sup>98</sup> *Constitution of Kenya* 2005 art 204

Fifteen of the twenty Meso and South American constitutions contain provisions on customary law. The predominant focus of these provisions is on land tenure. The Bolivian and Ecuadorian constitutions contain the most comprehensive references to customary law of any constitutions examined in this study, with each having substantial provisions relating to all of the main topics identified, as well as health, education and intellectual property.

In contrast to the African, Asian and European constitutions, the Meso and South American constitutions have few provisions on the general preservation of culture. An exception to this is the Paraguayan constitution, which requires the State to respect cultural heritage and, at their request, defend Indians against economic exploitation, cultural alienation and threats to their population and environment.<sup>99</sup> Bolivia, Ecuador, El Salvador, Guatemala, Honduras and Nicaragua protect culture and cultural heritage.<sup>100</sup> Bolivia, Ecuador, El Salvador and Nicaragua also protect native languages.<sup>101</sup>

Four of the Meso and South American constitutions grant rights to self-administration. Peru provides for the autonomous organization of indigenous communities<sup>102</sup> and Bolivia guarantees free determination of indigenous peoples, including the right to autonomy and self-government<sup>103</sup>. Paraguay grants Indian peoples the right to apply their systems of political, socioeconomic, cultural and religious organization.<sup>104</sup> In Nicaragua, an autonomous regime for indigenous communities and the ethnic communities of the Atlantic Coast must be established by statute.<sup>105</sup> This statute must detail the organs of the autonomous regions' governments and their relationship with other levels of government.

There are six Meso and South American countries with provisions relating to institutional arrangements. Colombia, Peru and Venezuela recognize the authorities of indigenous peoples and state that they may exercise functions according to their own law, provided that they are not contrary to the Constitution, national law, fundamental human rights, and/or public order.<sup>106</sup> In addition to the provisions mentioned above, Paraguay provides for the participation of Indian peoples in the political life of the country in accordance with customary practices and the law.<sup>107</sup> Bolivia recognises traditional institutions and provides for representation of indigenous peoples in statutory institutions.<sup>108</sup> It also requires democratic representation of indigenous peoples in accordance their own norms and procedures.<sup>109</sup> Ecuador provides for indigenous communities to establish organisations that represent them and to participate in official organisations to develop

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<sup>99</sup> *Constitution of the Republic of Paraguay 1992* art 66

<sup>100</sup> *Republic of Bolivia Constitution of 2009* arts 2, 30; *Republic of Ecuador Constitution of 2008* arts 3, 21, 57, 58, 377-379; *Constitution of the Republic of El Salvador 1983* arts 1, 32, 53, 63; *Constitution of the Republic of Guatemala 1985* arts 57-62; *Constitution of the Republic of Honduras 1982* arts 1, 172, 173; *Political Constitution of the Republic of Nicaragua 2007* arts 89, 90

<sup>101</sup> *Republic of Bolivia Constitution of 2009* arts 2, 5, 30; *Republic of Ecuador Constitution of 2008* arts 2, 347; *Constitution of the Republic of El Salvador 1983* art 62; *Political Constitution of the Republic of Nicaragua 2007* art 90

<sup>102</sup> *Political Constitution of Peru 1993* art 89

<sup>103</sup> *Republic of Bolivia Constitution of 2009* arts 2, 269, 289, 290, 291-296, 303, 304

<sup>104</sup> *Constitution of the Republic of Paraguay 1992* art 63

<sup>105</sup> *Political Constitution of the Republic of Nicaragua 2007* art 181.

<sup>106</sup> *Constitution of Colombia 1991* art 246; *Political Constitution of Peru 1993* art 149; *Constitution of the Bolivarian Republic of Venezuela 1999* art 260

<sup>107</sup> *Constitution of the Republic of Paraguay 1992* art 65

<sup>108</sup> *Republic of Bolivia Constitution of 2009* arts 2, 26

<sup>109</sup> *Republic of Bolivia Constitution of 2009* arts 2, 11, 26, 30, 146, 147

public policies relating to them.<sup>110</sup> Ecuador and Bolivia both also require prior consultation before adoption of legislation that may affect the rights of indigenous communities.<sup>111</sup>

Bolivia, Ecuador, Mexico and Peru have the only provisions relating to customary law and the judiciary in the region. Mexico's constitution does not actually refer to the jurisdiction of the courts in cases dealing with customary law, but provides protection (*amparo*) in trials<sup>112</sup> that contest acts depriving populations of the ownership of their land. In those cases, it provides for correction of defects in claim and the inapplicability of any statute of limitations or discontinuance due to inactivity.<sup>113</sup> Again without establishing jurisdiction of any court to deal with customary issues, the Peruvian constitution provides that general principles of law and customary law must be applied where there is a gap or deficiency in the law.<sup>114</sup> Bolivia's and Ecuador's constitutions, in contrast, recognise indigenous dispute resolution. Bolivia's constitution states that indigenous authorities exercise jurisdiction in accordance with their own principles, cultural values and procedures.<sup>115</sup> However, the constitution imposes the restriction that indigenous jurisdiction must respect the right to life, the right to defense and all other rights guaranteed in the constitution.<sup>116</sup> The Bolivian constitution also requires representation of indigenous peoples on the Plurinational Constitutional Court, whose functions include, amongst other things, resolving conflicts between indigenous and other jurisdictions.<sup>117</sup> Ecuador's constitution recognises indigenous communities' authorities, whose jurisdiction is based on their own system of law, in their own territories. Their decisions must not be contrary to the constitution or human rights under international law.<sup>118</sup> Decisions made under indigenous legal systems are included in the rule against prosecution for the same offence twice.<sup>119</sup>

As mentioned above, land features more heavily than any other topic in Latin American constitutions. Thirteen of the fifteen Meso and South American countries with constitutional provisions on customary law have some reference to land.<sup>120</sup> Paraguay provides extensive constitutional guarantees with respect to land tenure, community ownership, rights to sufficient land which the State provides free of charge and which are inalienable, as well as exemption from taxes.<sup>121</sup> Guatemala pledges to provide special protection to areas of communal ownership and allows continued administration of them in the manner historically used.<sup>122</sup> Similarly, numerous constitutions recognize rights to traditionally occupied land, communal property or reserves, with some stating that such are inalienable.<sup>123</sup> In contrast, Peru states that native communities are autonomous in

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<sup>110</sup> *Republic of Bolivia Constitution of 2009* arts 2, 11, 26, 30, 146, 147; *Republic of Ecuador Constitution of 2008* art 57

<sup>111</sup> *Republic of Ecuador Constitution of 2008* art 57

<sup>112</sup> A remedy for the protection of constitutional rights

<sup>113</sup> *Constitution of Mexico 1917* art 107(II)

<sup>114</sup> *Political Constitution of Peru 1993* art 139(8)

<sup>115</sup> *Republic of Bolivia Constitution of 2009* arts 179, 190

<sup>116</sup> *Republic of Bolivia Constitution of 2009* art 190

<sup>117</sup> *Republic of Bolivia Constitution of 2009* arts 197, 202

<sup>118</sup> *Republic of Bolivia Constitution of 2009* art 171

<sup>119</sup> *Republic of Bolivia Constitution of 2009* art 76

<sup>120</sup> Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Guyana, Honduras, Mexico, Paraguay, Peru, Venezuela

<sup>121</sup> *Constitution of the Republic of Paraguay 1992* art 64

<sup>122</sup> *Constitution of the Republic of Guatemala 1985* art 67

<sup>123</sup> *Constitution of the Argentine Nation 1853* s 75(17); *Republic of Bolivia Constitution of 2009* art 394; *Constitution of the Federative Republic of Brazil 1988* art 231; *Constitution of Colombia 1991* arts 63, 329,

their use and free disposal of their land.<sup>124</sup> Ecuador provides for the establishment of separate indigenous territories and recognizes collective land ownership.<sup>125</sup> Mexico guarantees protection of the integrity of the lands of indigenous groups and stipulates that their common use of land, water and forest will be regulated by law.<sup>126</sup> The Venezuelan and Paraguayan constitutions guarantee the right of native peoples to develop their identity with a reference to their 'habitat,' thereby linking cultural preservation and land rights.<sup>127</sup> The Nicaraguan constitution recognises the right of ethnic Atlantic Coast communities to natural resources, and in particular the right to the enjoyment, use and benefit of the waters and forests of communal land.<sup>128</sup>

As with African constitutions, there are provisions relating to the acquisition of indigenous land. Guyana states that land of Amerindians may be taken for the purpose of its care, protection or management.<sup>129</sup> Paraguay prohibits the removal of indigenous groups from their land without their express consent, as does the Brazilian constitution, with exceptions.<sup>130</sup> Peru and Colombia both provide that traditional lands are imprescriptible and cannot be seized by the State.<sup>131</sup>

In Brazil, traditionally occupied lands are the property of the Union.<sup>132</sup> Brazil's constitution also provides a definition of 'lands traditionally occupied', encompassing those that have been lived on and used for productive activities, or those necessary for preservation of the natural resources on which the Indian population relies. Indians traditionally occupying land are entitled to the riches of the soil, rivers and lakes and there are restrictions on mining on such land.<sup>133</sup>

The Bolivian constitution also has numerous provisions relating to indigenous use and management of natural resources. Similarly to Brazil, it gives indigenous peoples the right to exploit natural resources and share in the benefits of natural resources in their territories.<sup>134</sup> It also requires the State to respect the uses, customs and rights of indigenous peoples to sustainably manage water resources.<sup>135</sup> Similarly, the constitution recognises the exclusive right to manage the forests, where indigenous communities are located within the forest.<sup>136</sup>

Ecuador's constitution has provisions on natural resources that are similar to Bolivia's. The constitution provides the right to owner community lands, which are exempt from fees or taxes.<sup>137</sup> It also recognises the right of indigenous communities to participate in

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provisional art 55; *Republic of Ecuador Constitution of 2008* art 57; *Political Constitution of the Republic of Nicaragua 2007* arts 89, 180; *Constitution of the Bolivarian Republic of Venezuela 1999* art 119

<sup>124</sup> *Political Constitution of Peru 1993* art 89

<sup>125</sup> *Republic of Bolivia Constitution of 2009* art 6

<sup>126</sup> *Constitution of Mexico 1917* art 27

<sup>127</sup> *Constitution of the Bolivarian Republic of Venezuela 1999* art 119; *Constitution of the Republic of Paraguay 1992* arts 63, 64;

<sup>128</sup> *Political Constitution of the Republic of Nicaragua 2007* arts 89, 180.

<sup>129</sup> *Constitution of Guyana 1980* s 142(2)

<sup>130</sup> *Constitution of the Republic of Paraguay 1992* art 64(2); *Constitution of the Federative Republic of Brazil 1988* art 231(6)

<sup>131</sup> *Constitution of Colombia 1991* art 63; *Political Constitution of Peru 1993* art 89

<sup>132</sup> *Constitution of the Federative Republic of Brazil 1988* art 20

<sup>133</sup> *Constitution of the Federative Republic of Brazil 1988* art 231

<sup>134</sup> *Republic of Bolivia Constitution of 2009* arts 30, 403

<sup>135</sup> *Republic of Bolivia Constitution of 2009* art 374

<sup>136</sup> *Republic of Bolivia Constitution of 2009* art 388

<sup>137</sup> *Republic of Ecuador Constitution of 2008* art 57

the use and conservation of natural renewable resources on their lands and the right to consultation on plans for exploitation of non-renewable natural resources that could have an environmental or cultural impact on them.<sup>138</sup> The constitution further recognises the right to keep and promote indigenous communities' practices of managing biodiversity and the natural environment.<sup>139</sup>

In a style of provision that appears to be unique to Meso and South America, Mexico provides for the allocation of communal land and waters to communities that have insufficient resources, and grants legal capacity to enjoy common possession of lands, forests and waters to communities.<sup>140</sup> Paraguay similarly guarantees a right to shared ownership of sufficient land to preserve their lifestyle.<sup>141</sup> In Bolivia, this is termed as the granting of fiscal lands to communities which do not possess them, or which possess insufficient land.<sup>142</sup>

A particularly noticeable gap in the Meso and South American constitutions is provisions relating to the relationship between statutory and customary law. In a clear preference for statutory law, Costa Rica's constitution states that no custom or practice may be used as a defence against the enforcement of the law.<sup>143</sup> Bolivia's constitution is the only one to express a clear hierarchy. It explicitly lists a hierarchy of laws, with the constitution above all else, followed by international treaties, then national laws (including indigenous "legislation").<sup>144</sup> This clearly subordinates indigenous law to the constitution and international law, and does not refer to customary law that has not been codified into legislation.

### 3. North America and the Caribbean

There are very few provisions relating to customary law in North American and the Caribbean. Of fifteen countries identified as having written constitutions, only five of those contain relevant provisions. Furthermore, those provisions identified are not very broad and the level of recognition is not very high.

Canada's constitution contains the only provisions that may be seen as a relatively strong recognition of customary law. The Canadian constitution takes the approach of broadly recognizing aboriginal rights, rather than providing detail as to what those rights are. It reaffirms all existing aboriginal and treaty rights and preserves such rights, including land claims, despite anything in the Charter of rights and freedoms.<sup>145</sup> It also stipulates that provisions relating to official languages do not affect customary rights.<sup>146</sup>

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<sup>138</sup> *Republic of Ecuador Constitution of 2008* art 57

<sup>139</sup> *Republic of Ecuador Constitution of 2008* art 57

<sup>140</sup> *Constitution of Mexico 1917* art 27(VII)

<sup>141</sup> *Constitution of the Republic of Paraguay 1992* art 64

<sup>142</sup> *Republic of Bolivia Constitution of 2009* art 395

<sup>143</sup> *Constitution of Costa Rica 1949* art 129

<sup>144</sup> *Republic of Bolivia Constitution of 2009* art 410

<sup>145</sup> *Constitution of Canada 1982* ss 25, 35

<sup>146</sup> *Constitution of Canada 1982* s 22

The Dominican Republic provides broad recognition of the importance of cultural values and prohibits discrimination on the basis of national origin.<sup>147</sup> The constitution requires the government to protect the cultural property of the State.<sup>148</sup>

The only provisions potentially relevant for customary law found in the Caribbean constitutions are definitions of law which encompassed unwritten law.<sup>149</sup> None of these expressly recognizes customary law and are therefore not a strong recognition of such.

#### 4. South and East Asia

The degree of constitutional recognition of customary law in South and East Asia is one of the highest across all of the regions. Twenty-two South and East Asian constitutions were identified, and fifteen of these contain relevant provisions. However, the large majority of these merely recognize a broad right to culture. There are limited provisions on institutional arrangements and land tenure. There are also some provisions on the relationship between statutory law and custom.

In a form of provision more commonly seen in the East European constitutions, China grants regional autonomy to areas where people of minority nationalities live in compact communities.<sup>150</sup>

However, as mentioned above, the bulk of South and East Asian provisions on customary law relate to the preservation of culture. As with many other regions, how these provisions are expressed varies widely. The majority acknowledge a right to culture generally,<sup>151</sup> or language more specifically,<sup>152</sup> while Bhutan, Singapore and Thailand place a duty on the State to protect such culture.<sup>153</sup> Thailand also has a provision recognizing the right to culture, and includes in this the right to participate in the management, conservation and exploitation of natural resources and the environment.<sup>154</sup> In Lao People's Democratic Republic, whilst the constitution requires the State to develop cultural traditions, the State must also restrain all negative ideological and cultural phenomena.<sup>155</sup> No further criteria are provided as to which phenomena may be considered as negative. This allows for greater restrictions than many other constitutions, which may restrict traditions that violate human rights or international law.

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<sup>147</sup> *Constitution of the Dominican Republic 2010* arts 10, 39, 64, 193

<sup>148</sup> *Constitution of the Dominican Republic 2010* art 64, 66, 93

<sup>149</sup> See for example, *Constitution of Antigua and Barbuda 1981* s 127; *The Constitution of the Commonwealth of the Bahamas 1973* art 137; *The Constitution of Barbados 1966* s 117

<sup>150</sup> *Constitution of the People's Republic of China 1982* art 4(2)

<sup>151</sup> *Constitution of the People's Republic of Bangladesh 1972* art 23; *Constitution of India 1949* art 29(1); *Constitution of the Lao People's Democratic Republic 1991* art 8; *Constitution of the Republic of the Union of Myanmar 2008* s 354(d); *Interim Constitution of Nepal* arts 17(3), 35(18); *Constitution of the People's Republic of China 1982* art 4(1); *Constitution of the Democratic Socialist Republic of Sri Lanka 1978* art 14(1)(f); *Constitution of the Kingdom of Thailand 2007* s 66; *Constitution of the Democratic Republic of East Timor 2002* s 59(5); *Constitution of the Socialist Republic of Vietnam 1992* art 5

<sup>152</sup> *Constitution of Mongolia 1992*, art 8(2)

<sup>153</sup> *Constitution of the Kingdom of Bhutan 2008* art 4 ss 1-4, art 9 s 23; *Constitution of the Republic of Singapore 1963* art 152; *Constitution of the Kingdom of Thailand 2007* s 289

<sup>154</sup> *Constitution of the Kingdom of Thailand 2007* s 66

<sup>155</sup> *Constitution of the Lao People's Democratic Republic 1991* art 19

There are few provisions relating to institutional arrangements in South and East Asian constitutions. All of the provisions relate to the creation of bodies to represent indigenous rights in existing political institutions. The Philippines constitution allows creation of a body to advise on policies affecting indigenous communities.<sup>156</sup> In Bhutan, the king may appoint a council of ministers in accordance with tradition and custom.<sup>157</sup> In Malaysia, forty members of the Senate must be selected on the basis of, amongst other criteria, the ability to represent racial minorities or aborigines.<sup>158</sup>

In relation to land, different approaches are taken. Malaysia's constitution creates Malay reserves and allows restrictions on dealings with customary land in certain areas.<sup>159</sup> In the Philippines, rights to ancestral lands are recognized, along with customary laws determining property rights.<sup>160</sup> Further, the duty on the State to apply stewardship principles is subject to the rights of indigenous communities to their ancestral lands.<sup>161</sup>

Provisions on the relationship between customary and statutory law in South and East Asia vary considerably. India's constitution states that statutory law affecting customary law does not apply in particular areas unless the Legislative Assembly of that area decides so.<sup>162</sup> Along a similar vein, Timor-Leste provides that customs other than those contrary to the constitution and legislation specifically relating to customary law are preserved.<sup>163</sup> As with other constitutions around the world, some of the South and East Asian constitutions contain definitions of 'law' that recognize customary law.<sup>164</sup>

## 5. West Asia

In the second lowest rate of recognition of customary law, only four of the fourteen West Asian constitutions contain any reference to it. Pakistan's constitution is the only one to cover more than one topic of customary law.

Even references to a right to culture are limited to three in West Asian constitutions. Pakistan provides for a right to preserve culture,<sup>165</sup> while the Syrian Arab Republic phrases this in terms of a right to participate in cultural life.<sup>166</sup> In a uniquely worded provision, Qatar requires all who enter its territory to observe established customs and traditions.<sup>167</sup>

Pakistan's constitution refers to Federally Administered Tribal Areas and Provincially Administered Tribal Areas, and removes them from the application of any Act and the

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<sup>156</sup> *Constitution of the Republic of the Philippines 1987* art XVI S 12

<sup>157</sup> *Constitution of the Kingdom of Bhutan 2008* art 2 s 16

<sup>158</sup> *Constitution of Malaysia 1957* art 45

<sup>159</sup> *Constitution of Malaysia 1957* arts 89, 90

<sup>160</sup> *Constitution of the Republic of the Philippines 1987* art XII S 5

<sup>161</sup> *Constitution of the Republic of the Philippines 1987* art XIII s 6

<sup>162</sup> *Constitution of India 1949* arts 371A, 371G

<sup>163</sup> *Constitution of the Democratic Republic of East Timor 2002* s 2(4); see also *Constitution of the Republic of Indonesia 1945* art 18B(2), which preserves customary law that is not contrary to societal development

<sup>164</sup> *Constitution of the People's Republic of Bangladesh 1972* art 152; *Constitution of India 1949* art 13(3)(a) (note: this definition is only for the purpose of provisions on fundamental rights); *Constitution of Malaysia 1957* art 160(2)

<sup>165</sup> *Constitution of the Islamic Republic of Pakistan 1999* art 28

<sup>166</sup> *Constitution of the Syrian Arab Republic 1973* art 26

<sup>167</sup> *Constitution of the State of Qatar* art 57



Supreme Court or a High Court unless otherwise provided.<sup>168</sup> It also expressly recognizes custom and usage in the definition of law, but states that any custom contrary to the constitution is void.<sup>169</sup>

The only provision on institutional arrangements is in the form of representation within existing institutions, rather than the recognition of customary institutions. The Afghani constitution requires that two representatives of nomadic groups be members in the House of Elders.<sup>170</sup>

## 6. Oceania

Twelve Oceanic constitutions have provisions relevant to customary law. A large proportion of these deal with institutional arrangements and land. There are also a significant number of provisions on the judiciary and customary law.

The Marshall Islands constitution is the only non-African constitution to deal with codification of customary law. It requires the Nitijela (parliament) to declare customary law by Act. In this function, the Nitijela is not limited to pure declaration of customary law, but may also supplement established rules of customary law.<sup>171</sup>

Institutional provisions in Oceania are similar to those in Africa – with some recognizing traditional leaders, others creating advisory bodies, and still others incorporating representation of traditional communities into existing institutions. Traditional leaders and their customary functions are recognized and preserved in the constitutions of the Federated States of Micronesia and Palau.<sup>172</sup> The constitution of the Marshall Islands contains provisions relating to a Council of Iroj, members of which are appointed according to customary law and the functions of which include requesting reconsideration of any Bill affecting customary law.<sup>173</sup> Palau and Vanuatu also establish similar councils to consider and advise on matters of customary law and their interaction with the Constitution and statutory law.<sup>174</sup>

The Fijian constitution contains a range of provisions in relation to institutional arrangements. It allows the limitation of rights for the purpose of providing for the application of customary laws to the appointment of chiefs or other customary titles.<sup>175</sup> As seen in some of the African constitutions, it requires the boundaries of constituencies to be altered in recognition of traditional areas.<sup>176</sup> Tuvalu's constitution contains a similar provision on constituency boundaries.<sup>177</sup>

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<sup>168</sup> *Constitution of the Islamic Republic of Pakistan 1999* art 247

<sup>169</sup> *Constitution of the Islamic Republic of Pakistan 1999* arts 8, 203B

<sup>170</sup> *The Constitution of the Islamic Republic of Afghanistan 2004*, art 84

<sup>171</sup> *Constitution of the Republic of the Marshall Islands 1979* art X, s 2

<sup>172</sup> *Constitution of the Federated States of Micronesia 1975* art V s 1; *Constitution of the Republic of Palau 1979* art V s 1

<sup>173</sup> *Constitution of the Republic of the Marshall Islands 1979* art III ss 1-3

<sup>174</sup> *Constitution of the Republic of Palau 1979* art VIII, s 6; *Constitution of the Republic of Vanuatu 1980* arts 29, 30

<sup>175</sup> *Constitution of Fiji 1997* s 38(8) – note: this Constitution was abrogated in 2009 but has not yet been replaced so is used for analysis

<sup>176</sup> Ss 52, 185

<sup>177</sup> *Constitution of Tuvalu 1986* s 83(2)(c)

Seven Oceanic constitutions contain provisions on customary law in the courts. Again, these are similar to those seen in other parts of the world, although many are particularly strong recognition of customary law. Some establish specific courts with jurisdiction over matters involving customary law.<sup>178</sup> The Cook Islands simply restricts the jurisdiction of the Land Division of its High Court in relation to land that was not exercised by the Land Court according to local custom.<sup>179</sup> In a strong provision, the constitution of Micronesia requires that all court decisions be consistent with Micronesian customs and traditions.<sup>180</sup> In a similar provision, the constitution of Papua New Guinea allows the court to take whatever action it considers appropriate where a decision that is otherwise binding on the court is inconsistent with applicable custom.<sup>181</sup> Where there is no applicable law in a Vanuatu court, it must determine the matter in conformity with custom.<sup>182</sup> In Tuvalu, a court may have regard to traditional practices in determining whether an act is reasonably justified.<sup>183</sup> Vanuatu also provides for the appointment to the courts of persons knowledgeable in customary law, and for Parliament to establish methods for ascertaining customary law.<sup>184</sup>

Provisions relating to customary land rights take a variety of forms in Oceania. In a provision similar to those seen in Meso and South American countries, the Marshall Islands provides that rights in land under customary law are not alienable except with approval, although this is subject to the customary law itself.<sup>185</sup> Samoa similarly recognizes customary tenure and states that it is inalienable.<sup>186</sup> Papua New Guinea expressly allows taking possession or acquisition of land in accordance with custom.<sup>187</sup> Fiji's constitution is unique in providing constitutional recognition of traditional fishing rights, along with the right to an equitable share of royalties.<sup>188</sup> Also similar to provisions of Meso and South American constitutions, New Zealand's Treaty of Waitangi confirms and guarantees the rights of indigenous people to the exclusive possession of their land, forest, fisheries and other properties they possess. It states, however, that the right of pre-emption is awarded to the English monarch should the holders of the land wish to alienate the land.<sup>189</sup>

Vanuatu has one of the most expansive provisions in the world, stating that all land belongs to the indigenous owners and their descendants and that custom forms the basis of ownership and use of land.<sup>190</sup> It requires permission for land transactions between an indigenous and a non-indigenous person, but states that such permission shall be granted unless the transaction is injurious to the interests of the customary owner.<sup>191</sup> It also contains an interesting provision relating to redistribution of land, stating

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<sup>178</sup> *Constitution of the Republic of the Marshall Islands* 1979 art VI, s 4; *Constitution of the Independent State of Western Samoa* 1960 art 103; *Constitution of the Republic of Vanuatu* 1980 art 52

<sup>179</sup> *Constitution of the Cook Islands* 1965 art 48(3)

<sup>180</sup> *Constitution of the Federated States of Micronesia* 1975 art XI, s 11

<sup>181</sup> *Constitution of the Independent State of Papua New Guinea* 1975 sch 2.10(1)

<sup>182</sup> *Constitution of the Republic of Vanuatu* 1980 art 47(1)

<sup>183</sup> *Constitution of Tuvalu* 1986 s 15(5)

<sup>184</sup> *Constitution of the Republic of Vanuatu* 1980 art 51

<sup>185</sup> *Constitution of the Republic of the Marshall Islands* 1979 art X s 1

<sup>186</sup> *Constitution of the Independent State of Western Samoa* 1960 art 101, 102

<sup>187</sup> *Constitution of the Independent State of Papua New Guinea* 1975 s 53(5)(d)

<sup>188</sup> *Constitution of Fiji* 1997 ss 38(8), 186 – note: this Constitution was abrogated in 2009 but has not yet been replaced so is used for analysis

<sup>189</sup> Treaty of Waitangi art 2

<sup>190</sup> *Constitution of the Republic of Vanuatu* 1980 arts 73, 74

<sup>191</sup> *Constitution of the Republic of Vanuatu* 1980 art 79

that the government may purchase land from customary holders in order to transfer such ownership to the indigenous citizen of an over-populated island.<sup>192</sup>

Again similarly to Latin American and African constitutions, the Solomon Islands constitution has provisions relating to compulsory acquisition of customary interests in land.<sup>193</sup> The Papua New Guinean constitution contains a unique provision, that upholds the validity of any law that recognizes claimed title where there is a genuine dispute over whether the land was acquired legally from customary owners prior to independence, and that provides for extra-judicial settlement of disputes over the ownership of customary land.<sup>194</sup> Samoa and Vanuatu both establish a specific body responsible for hearing and determining claims relating to customary interests in land.<sup>195</sup>

The relationship between customary and statutory law is interesting, and different from that seen elsewhere, in many of the Oceanic countries. Palau expressly states that statutes and traditional law shall be equal, that where there is conflict the statute prevails, but that a statute shall only prevail to the extent it is not inconsistent with the underlying principles of traditional law.<sup>196</sup> The Solomon Islands and Papua New Guinea similarly adopt custom as part of the underlying law, except that which is inconsistent with the constitution, statute or general principles of humanity.<sup>197</sup> Both also contain another expression of supremacy of customary law, stating that the common law and equity of England are only adopted so long as they are not inconsistent with customary law.<sup>198</sup> Vanuatu's Constitution contains very similar provisions.<sup>199</sup>

It is also interesting to note that, in its definition of 'custom', Papua New Guinea expressly rejects the requirement, commonly found elsewhere, that the custom must have existed since time immemorial.<sup>200</sup>

Micronesia requires the consideration of local custom in defining crimes and their penalties.<sup>201</sup> It also states that protection of Micronesian tradition shall be considered a compelling social purpose in the case of any action challenging a law protecting traditions on the basis of the rights prescribed in article IV of the constitution.<sup>202</sup> As discussed above, customary law may also form part of a defence in Tuvalu, allowing the court to consider traditional practices in determining whether an act was reasonable.<sup>203</sup> Vanuatu appears to implicitly accept customary criminal law, prohibiting retrospective application of offences under written or customary law.<sup>204</sup>

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<sup>192</sup> *Constitution of the Republic of Vanuatu 1980* art 81

<sup>193</sup> *Constitution of the Solomon Islands 1978* s 112

<sup>194</sup> *Constitution of the Independent State of Papua New Guinea 1975* s 54

<sup>195</sup> *Constitution of the Independent State of Western Samoa 1960* art 103; *Constitution of the Republic of Vanuatu 1980* art 78

<sup>196</sup> *Constitution of the Republic of Palau 1979* art V s 2

<sup>197</sup> *Constitution of the Independent State of Papua New Guinea 1975* sch 2.1; *Constitution of the Solomon Islands 1978* sch 3 s 3

<sup>198</sup> *Constitution of the Independent State of Papua New Guinea 1975* sch 2.2(1); *Constitution of the Solomon Islands 1978* sch 3 s 2

<sup>199</sup> *Constitution of the Republic of Vanuatu 1980* art 95(2),(3)

<sup>200</sup> *Constitution of the Independent State of Papua New Guinea 1975* sch 1.2(1)

<sup>201</sup> *Constitution of the Federated States of Micronesia 1975* art IX, s 2(p)

<sup>202</sup> *Constitution of the Federated States of Micronesia 1975* art V, s 2

<sup>203</sup> *Constitution of Tuvalu 1986* s 15(5)

<sup>204</sup> *Constitution of the Republic of Vanuatu 1980* art 5(2)(f)

Fiji's constitution provides special procedures for the amendment of statutes relating to indigenous peoples.<sup>205</sup> It also requires parliament to provide for the application of customary laws and traditional dispute resolution,<sup>206</sup> and along with the Solomon Islands, requires parliament to have regard to customs and usages.<sup>207</sup> As mentioned above, in the Marshall Islands, a traditional body (the Council of Iroij) has the power to request reconsideration of a Bill on the basis of its affecting customary law.<sup>208</sup>

## 7. East Europe, North and Central Asia

The constitutions of East Europe, North and Central Asia ("EENCA") has the highest rate of recognition of customary law – of 28 constitutions, only six did not refer to customary law. However, the vast majority take the form of recognition of a right to culture. Provisions on administration of indigenous or minority areas are the second most prevalent form of provision.

The most provisions relating to self-administration of certain groups in society are found in the constitutions of EENCA. In Estonia, a broad provision states that any minority group is entitled to establish self-governing agencies.<sup>209</sup> Provisions specific to ethnic groups are found in the Slovenian, Hungarian and Lithuanian constitutions, with Slovenia and Hungary establishing rights to self-government and Lithuania allowing ethnic groups to manage their own affairs in relation to culture.<sup>210</sup> The Ukraine establishes a right to self-government for territorial communities.<sup>211</sup> Serbia allows limited self-government, only in the fields of culture, education, information and official use of their language and script.<sup>212</sup>

Constitutions of EENCA countries more often contain broad recognition of the rights of minorities or indigenous peoples. These are sometimes similar to provisions in other regions relating to the preservation of customs and traditions.<sup>213</sup>

The Russian Federation gives joint responsibility to the government and citizens to protect the traditional way of life of ethnic minorities and guarantees the rights of indigenous peoples according to universally recognized principles of international law.<sup>214</sup> Conversely, the Ukrainian constitution states that rights of indigenous peoples are determined solely by Ukrainian law.<sup>215</sup> Kyrgyzstan simply preserves customs and

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<sup>205</sup> *Constitution of Fiji 1997* s 185 – note: this Constitution was abrogated in 2009 but has not yet been replaced so is used for analysis

<sup>206</sup> *Constitution of Fiji 1997* s 186(1)

<sup>207</sup> *Constitution of Fiji 1997* s 186(2); *Constitution of the Solomon Islands 1978* s 75

<sup>208</sup> *Constitution of the Republic of the Marshall Islands 1979* art III, s 2

<sup>209</sup> *Constitution of the Republic of Estonia 1996* s 50

<sup>210</sup> *Constitution of the Republic of Slovenia 1991* art 64; *Constitution of the Republic of Hungary 1949* art 68(4); *Constitution of the Republic of Lithuania 1992* art 45

<sup>211</sup> *Constitution of Ukraine 1996* art 140

<sup>212</sup> *Constitution of the Republic of Serbia 2006* art 75

<sup>213</sup> *The (First) Constitution of the Republic of Armenia 2005* art 41; *Constitution of the Azerbaijan Republic 1978* art 40; *Constitution of the Republic of Belarus 1994* art 15; *Constitution of Georgia 1995* art 34; *Constitution of the Republic of Kazakhstan 1995* art 19(2); *Constitution of the Slovak Republic 1992* art 34; *Constitution of the Republic of Uzbekistan 1991* art 4

<sup>214</sup> *Constitution of the Russian Federation 1993* art 72(1)(l)

<sup>215</sup> *Constitution of Ukraine 1996* art 92(3)

traditions other than those contrary to human rights.<sup>216</sup> It is notable that this provision does not appear to make custom subordinate to the constitution or statutory law. The Slovak constitution uniquely provides that the exercise of rights of national minorities provided for in the constitution must not threaten the sovereignty and territorial integrity of the Slovak Republic.<sup>217</sup>

In relation to institutional arrangements, the Kyrgyz constitution provides a right to hold a national "kurultai"<sup>218</sup> on issues of state and public importance with the decision reached by the kurultai submitted to the relevant state agency.<sup>219</sup> The Kyrgyz constitution also recognizes a right to establish "aksakal's" courts.<sup>220</sup> Several other constitutions provide for the participation of minorities in existing institutions. A right to authentic representation of minorities in Parliament and local governments is guaranteed in Montenegro, and minorities are also entitled to form councils for the protection of special rights.<sup>221</sup> Hungary establishes the Parliamentary Commissioner for the Rights of National and Ethnic Minorities to investigate infringement of their rights<sup>222</sup> and requires that the representation of national and ethnic minorities be provided for under law.<sup>223</sup> The Hungarian constitution also requires a special majority of two-thirds of the votes of the Members of Parliament present in order to pass legislation on the rights of national and ethnic minorities.<sup>224</sup>

Romania is alone in recognizing any form of custom in relation to land. It does not recognize customary tenure, but recognizes duties relating to environmental protection and ensuring neighbourliness in accordance with law or custom.<sup>225</sup>

In a unique provision, the Serbian constitution prohibits the forced assimilation of members of national minorities, and requires protection against forced assimilation to be established under law.<sup>226</sup>

## 8. West Europe

The constitutional recognition of customary law across West Europe is quite broad, although not particularly strong. The most frequent provisions relate to self-administration, protection of culture, and institutional arrangements, each of which are found in a roughly equal number of constitutions in West Europe.

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<sup>216</sup> *Constitution of the Kyrgyz Republic 2010* art 37, s 1

<sup>217</sup> *Constitution of the Slovak Republic 1992* art 34(3)

<sup>218</sup> "Kurultai" is the Kyrgyz word meaning "gathering of people". Historically, the Kyrgyz people had this tradition to meet for discussion of vital and important issues and making decisions; it was similar to a Kyrgyz "ad hoc" parliament (Akmatova, pers. comm.).

<sup>219</sup> *Constitution of the Kyrgyz Republic 2010* art 52, s 2

<sup>220</sup> *Constitution of the Kyrgyz Republic 2010* art 59. Note: "Aksakal" is the Kyrgyz word meaning "old man". In this context, this means the most respected old men can resolve the disputes, thus, behaving like judges (Akmatova, pers. comm.).

<sup>221</sup> *Constitution of the Republic of Montenegro 2007* art 79(9),(13)

<sup>222</sup> *Constitution of the Republic of Hungary 1949* art 32B

<sup>223</sup> *Constitution of the Republic of Hungary 1949* art 68(3)

<sup>224</sup> *Constitution of the Republic of Hungary 1949* art 68(5)

<sup>225</sup> *Constitution of Romania 1991* art 41(6)

<sup>226</sup> *Constitution of the Republic of Serbia 2006* art 78

West European constitutions include provisions on autonomy similar to those found in EENCA countries. Andorra's *Comuns* are established as self-governing areas subject to the Constitution, laws and tradition.<sup>227</sup> Additionally, custom and usage are to be taken into account in determining the jurisdiction of *Quarts* and *Veinats* (lesser territorial units).<sup>228</sup> Finland provides for the 'linguistic and cultural self-government' of the Sami in their native region.<sup>229</sup> Spain's constitution provides criteria for the establishment of self-governing communities, including common historic and cultural characteristics and insular territories, and preserves the rights of self-governing communities in relation to their *fueros* (traditional charters).<sup>230</sup> The self-governing communities are provided with competence to regulate specific matters listed in the constitution, including town planning, infrastructure, agriculture, forestry, fisheries and environmental protection.

Provisions relating to the protection of culture are similar to those found elsewhere. Andorra requires the State to guarantee the conservation, promotion and diffusion of cultural heritage.<sup>231</sup> In a slightly more comprehensive provision, Norway requires the State to enable the Sami to preserve and develop their language, culture and way of life.<sup>232</sup> Finland also protects the right to use indigenous languages and culture and requires statute to enunciate the right of the Sami to use their own language before the authorities.<sup>233</sup>

The Spanish constitution is the only Western European one to refer to customary and traditional courts, listing participation in a jury in customary and traditional courts as a method of citizen engagement.<sup>234</sup>

The French constitution recognizes customary law, but only in New Caledonia and only in relation to citizenship, the electoral system, employment and personal status. The constitution requires the law to determine rules on these issues as laid down in customary law.<sup>235</sup>

Turkey requires the State and forest communities to cooperate in the management of forests for the purposes of ensuring their conservation and improving living standards of the community.<sup>236</sup>

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<sup>227</sup> *Constitution of Andorra 1993* art 79

<sup>228</sup> *Constitution of Andorra 1993* art 84

<sup>229</sup> *Constitution of Finland 1999* s 121(4)

<sup>230</sup> *Constitution of Spain 1978* ss 143, 149

<sup>231</sup> *Constitution of Andorra 1993* art 34

<sup>232</sup> *Constitution of the Kingdom of Norway 1814* art 110a

<sup>233</sup> *Constitution of Finland 1999* s 17

<sup>234</sup> *Constitution of Spain 1978* s 125

<sup>235</sup> *Constitution of France 1958* art 77

<sup>236</sup> *Constitution of the Republic of Turkey 1982* art 170

## Conclusions and findings

This section begins by identifying trends identified across the various regions. It points out some of the most interesting and unique provisions identified. The implications of these trends for the utilization of customary law in natural resource governance are then discussed.

Constitutional provisions on customary law can generally be categorised under ten headings, plus an additional miscellaneous category. These headings are: definitions of customary law; the protection of culture; the general protection of indigenous or minority rights; institutional arrangements; self-administration; family law; land and resource rights; codification of customary law; customary law in the courts; and the relationship between customary and statutory law.

It is notable that nine constitutions provide a definition of customary law.<sup>237</sup> Four of these<sup>238</sup> define customary law as, “customs and usage having the force of law.” Without further analysis of the interpretation of these provisions, it is unclear what ‘having the force of law’ requires. It may refer to acceptance of the customs and usage by those subject to it, or by the national courts. These two interpretations would have significantly different implications. The most exhaustive definition is given in the Papua New Guinean constitution, which defines custom as, “the customs and usages of indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial.”<sup>239</sup> This is notable in that it does not require the custom to have been established for a long time.

Of all of the categories, the most frequently encountered is the protection of culture, with 68 of the constitutions having such provisions. As this does not amount to an actual recognition of customary law itself, this type of provision may be seen as the weakest constitutional recognition identified. In contrast, provisions relating to institutional arrangements and the relationship between customary and statutory law may provide very strong recognition of customary law. Forty-two constitutions contained provisions relating to institutional arrangements and 38 included provisions on the relationship between customary and other national or international law.

Of particular interest for natural resource governance, 39 constitutions have provisions on customary law relating to land tenure and resource rights. Africa, Meso and South America and Oceania account for 35 of these countries, all in roughly equal proportion. Tenure systems established range from a trust arrangement with land held either by the government or an indigenous community for the benefit of communities, to *sui generis* customary tenure.<sup>240</sup> Brazil and Mexico expressly recognize rights not only to the land

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<sup>237</sup> Bangladesh, Ghana, Lesotho, Marshall Islands, Papua New Guinea, Samoa, Sierra Leone, Singapore and Zimbabwe

<sup>238</sup> Bangladesh, Marshall Islands, Samoa and Singapore

<sup>239</sup> *Constitution of the Independent State of Papua New Guinea 1975* Sch 1.2

<sup>240</sup> For examples of different trust arrangements, see *Constitution of the Republic of Ghana 1992* art 267 and *Constitution of Malaysia 1957* art 89; for *sui generis* customary tenure see *Constitution of the Republic of Uganda 1995* art 237(3)

but also to the soil, waters and forests.<sup>241</sup> In a provision only seen in these two countries, Paraguay and Mexico stipulate that the right to land encompasses the right to sufficient land to enable their subsistence.<sup>242</sup>

Interestingly, there are also some provisions directly tying natural resource management and customary rights to land. Romania does not actually recognize customary tenure, but states that the right of property gives rise to duties relating to environmental protection in accordance with custom.<sup>243</sup> Brazil's customary land rights are based on lands traditionally occupied, the definition of which encompasses lands indispensable to preservation of environmental resources necessary for the indigenous communities' well-being.<sup>244</sup>

Several constitutions provide for the involvement of indigenous communities in the management of natural resources. Bolivia, Brazil and Ecuador recognise the right to participate in the extraction of non-renewable resources from indigenous lands, and Fiji provides for the right to royalties.<sup>245</sup> Additionally, Ecuador's constitution grants the right to participate in the management of renewable resources on the lands. Spain establishes that self-governing communities have competence over forestry, environmental protection, and inland fishing.<sup>246</sup> Bolivia's constitution is the most comprehensive in providing for indigenous involvement in natural resource governance. It provides that indigenous autonomous regions exercise jurisdiction over renewable natural resources in their territories, consistent with the constitution, and have the right to monitor mining and other extractive activities.<sup>247</sup> The constitution also recognises, respects and protects the rights of indigenous organizations to sustainably manage water resources, and the exclusive right of indigenous communities living in forests to use and manage those forests.<sup>248</sup> Uniquely, Ecuador completely prohibits extractive industries in voluntarily isolated indigenous communities.<sup>249</sup>

There is a notable absence of provisions recognizing customary user rights independent of occupation of land, however. Fiji is alone in recognizing customary fishing rights.<sup>250</sup> New Zealand's Treaty of Waitangi recognises the right of indigenous tribes to lands, forests, fisheries and other properties, but appears to relate this to possession.<sup>251</sup> None of other the constitutions examined contains any recognition of customary rights to hunt or gather on land, or fish in waters, other than that which they occupy or own. This is inconsistent with the nature of customary systems in many parts of the world, where nomadic or transhumance practices are common or user rights simply extend beyond the area occupied by a community.<sup>252</sup>

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<sup>241</sup> *Constitution of the Federative Republic of Brazil 1988* art 231; *Constitution of Mexico 1917* art 27(VII)

<sup>242</sup> *Constitution of Mexico 1917* art 27(VII); *Constitution of the Republic of Paraguay 1992* art 64

<sup>243</sup> *Constitution of Romania 1991* art 41(6)

<sup>244</sup> *Constitution of the Federative Republic of Brazil 1988*, art 231

<sup>245</sup> *Republic of Bolivia Constitution of 2009* art 352; *Constitution of the Federative Republic of Brazil 1988*, art 231; *Republic of Ecuador Constitution of 2008* art 57; *Constitution of Fiji 1997* s 186(3) – note: this Constitution was abrogated in 2009 but has not yet been replaced so is used for analysis

<sup>246</sup> *Constitution of Spain 1978* s 148

<sup>247</sup> *Republic of Bolivia Constitution of 2009* art 304

<sup>248</sup> *Republic of Bolivia Constitution of 2009* arts 374, 388

<sup>249</sup> *Republic of Ecuador Constitution of 2008* art 57

<sup>250</sup> *Constitution of Fiji 1997* ss 38(8), 186(3) – note: this Constitution was abrogated in 2009 but has not yet been replaced so is used for analysis

<sup>251</sup> Treaty of Waitangi 1840 art 2

<sup>252</sup> Bosselman and Orebech, above n 3, 1-3. This has been the issue in a number of Hawaiian court cases. See for example, *Public Access Shoreline Hawaii v Nansay (Public Access Shoreline Hawaii v Hawaii*



Institutional arrangements may also have particular impact on natural resource governance. Such provisions frequently determine who has control over access and use of natural resources, as well as the power afforded to different parts of the community. The African constitutions contain the greatest number of provisions on institutional arrangements. Oceania constitutions also contain a number of provisions in this area, similar to those of African constitutions. Broadly, the institutional arrangements range from involvement of indigenous peoples or minorities in statutory institutions,<sup>253</sup> to the establishment of specific bodies with specified functions in relation to customary law,<sup>254</sup> to broad recognition of some or all traditional authorities.<sup>255</sup> These provisions indicate potential institutions or authorities involved, or which should be involved, in natural resource governance, and provide additional means of integrating customary systems of resource use with statutory regulation. Such provisions may facilitate consideration of customary use of natural resources when debating proposed legislation, particularly where indigenous peoples are represented. Alternatively, where indigenous authorities have the capacity to enact statutes, for example in autonomous regions, it may enable statute to reflect the position under customary law within their autonomous territory.

The variety of provisions adopting customary law and regulating the relationship between statutory and customary law may also have implications for natural resource governance. Where statute regulates an aspect of natural resource management, such provisions may dictate whether customary rules can still apply. The majority of provisions stipulate that customary law is subordinate to the constitution,<sup>256</sup> with some also expressly identifying it as subordinate to statutory law.<sup>257</sup> There are, however, some provisions elevating customary law. Timor-Leste's constitution establishes that customary law is subordinate to statutory law dealing especially with customary law, implying that perhaps it may prevail over statutory law not especially dealing with customary law.<sup>258</sup> Papua New Guinea and the Solomon Islands establish that customary law is superior to imported colonial common law and equity.<sup>259</sup> However, the strongest provision is that found in Palau's constitution. It states that statutory and customary law

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*County Planning Commission*) 903 P.2d 1246 (1995); *Pele Defense Fund v Paty* 837 P.2d 1247 (1992); *Kalipi v Hawaiian Trust Co* 656 P.2d 745 (1982)

<sup>253</sup> See the *African Charter on Human and Peoples Rights*, contained within the *Constitution of the Republic of Cameroon* 1972, art 57(2); *Transitional Federal Charter for the Somali Republic* 2004 arts 30, 71(5)

<sup>254</sup> *Constitution of Botswana* 1966 ss 77-85; *Constitution of the Republic of Ghana* 1992 arts 272, 274; *Constitution of the Republic of Namibia* 1990 art 102(5); *Constitution of the Republic of South Africa* 1996 ss 185, 212; *Constitution of the Kingdom of Swaziland* 2005 s 251

<sup>255</sup> *Constitution of the Democratic Republic of the Congo* 2005 art 207; *Constitution of Sierra Leone* 1991 s 72; *Constitution of the Republic of South Africa* 1996 ss 211, 212; *Constitution of the Kingdom of Swaziland* 2005 ss 5, 227; *Constitution of the Republic of Uganda* 1995 art 246(1); *Constitution of Zambia* 1996 art 127(1)

<sup>256</sup> *Constitution of the Federal Democratic Republic of Ethiopia* 1995 art 9(1); *Constitution of the Republic of Liberia* 1986 art 2; *Constitution of the Republic of Malawi* 1994 s 200; *The Constitution of the Republic of Namibia* 1990 art 66(1); *Constitution of the Islamic Republic of Pakistan* 1999 art 8(1); see also *Constitution of the Republic of Ghana* 1992 art 11(2) and *The Constitution of Sierra Leone* 1991 s 91, which define common law as including the rules of customary law. This may impliedly mean that statutory law prevails over customary law in the same way it does over general common law

<sup>257</sup> *Constitution of the Republic of Namibia* 1990 art 66; *Constitution of the Republic of Rwanda* 2003 art 201; *Constitution of the Independent State of Papua New Guinea* 1975 sch 2.1(2); *Constitution of the Solomon Islands* 1978 sch 3 s 3

<sup>258</sup> *Constitution of the Democratic Republic of East Timor* 2002 s 2(4)

<sup>259</sup> *Constitution of the Independent State of Papua New Guinea* 1975 sch 2.2(1); *Constitution of the Solomon Islands* 1978 sch 3 s 3

are equal. Where the two conflict, statute does prevail, however this is only to the extent that the statute does not conflict with underlying principles of customary law.<sup>260</sup>

Acknowledging that there are many other constitutions with unique and significant provisions, the most comprehensive recognition of customary law is found in the constitutions of Bolivia and Ecuador. Both of these constitutions contain significant provisions relating to most of the categories of provisions identified above, including land, customary law in the courts and traditional institutions. Additionally, both constitutions contain provisions directly relating to customary law and the governance of natural resources. Notably, neither includes a definition of customary law or an explicit provision on the relationship between statute and customary law.

It is important to emphasise that constitutional silence on the issue of customary law does not mean that customary law does not exist or is unimportant or irrelevant in a country. As long as there is no provision expressly excluding or limiting the application of customary law, there is potential scope to develop the relationship between customary and statutory law.

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<sup>260</sup> *Constitution of the Republic of Palau 1979 art V s 2*

## Further research

As mentioned above, the bibliographies in the annexes of this paper are not exhaustive. Of particular importance for further research, there are likely to be a considerable number of statutory provisions relating to customary law that were not identified in this study. Additionally, this study focused on provisions expressly referring to customary law. A more comprehensive study of provisions implicitly affecting customary law would be of great benefit. Analysis of case law regarding and impacting on customary law would be valuable. The courts may significantly affect the application of customary law in any jurisdiction, through recognition or otherwise of customary rights and declarations regarding their relationship with other domestic laws.<sup>261</sup>

It would be of particular interest to conduct further research on the recognition of customary law in countries or regions whose constitutions do not explicitly recognize it. For example, in the process of compiling the bibliography in Annex B, the author found much reference to customary law in New Zealand statutes. However, recognition of customary law in New Zealand's constitution is weak compared to many other countries studied. The doctrine of Native Title, recognised in the United States, Australia, Canada, New Zealand, and South Africa, also provides an example of recognition of customary law without accompanying constitutional provisions. Native Title has been important in recognising customary rights to land and overcoming the effects of the doctrine of *terra nullius*. While a country may not constitutionally recognize customary law, it may use other statutory and jurisprudential means to serve the same purpose. This research may help to identify the impact of constitutional provisions, or lack thereof, on the actual recognition of customary law in practise.

Additionally, investigation of the practical operation of the provisions identified and discussed above would be of use. Particularly, research on the operation of land tenure systems and institutional arrangements may provide valuable insights into the potential operation of customary law with respect to natural resource governance. For this purpose, African or Oceanic countries would provide good case studies. In Africa, Ghana's constitution provides the most comprehensive recognition of customary law. The articles identified in the bibliography indicate that there has already been some work done on customary law in Ghana. Uganda and Zimbabwe would also provide interesting case studies, as they both have broad provisions on customary law, including recognition of customary institutions and land rights. In Oceania, Fiji would provide a unique case study due to its recognition of customary fishing rights. The Marshall Islands constitution also contains very broad and comprehensive provisions. In particular, the Council of Iroij's role in requesting the reconsideration of a Bill affecting customary law may be of interest in examining the relationship between customary and statutory law. Vanuatu has comprehensive provisions relating to land, institutions and customary law in the judiciary, so may also provide a good case study.

In connection with the practical implications of constitutional and other provisions on customary law, it would be valuable to conduct further study into issues surrounding

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<sup>261</sup> For example, in *Magaya v. Magaya* (SC 210/98), the Zimbabwean Supreme Court unanimously held that customary law applied in an inheritance case (dealing with land), despite an explicit provision in the constitution stating that men and women have equal rights.

proof of customary law. As customary law is usually unwritten, proof of its existence and content can be a significant challenge. It may lead to the courts, in many instances, being asked to determine what the recognisable content of the customary law is. Further research into processes for determining the content of customary laws and the role of indigenous peoples in those processes would provide assistance in ensuring that State-recognised customary law accurately represents its meaning to those to which applies.

Further research into the implications of provisions relating to land tenure would be valuable. Land tenure has implications for natural resource governance in establishing who has the rights to manage areas of land. Where registration of customary interests in land is not required, it may be difficult to ascertain ownership or other land rights. However, where registration is required, the implications of failing to register should be examined, and education on the need to register and assistance in doing so may be necessary.

As mentioned above, there are few constitutional provisions acknowledging access to resources independent from a right to land. Failing other provisions clarifying the situation, there is likely to continue to be disputes over traditional access to resources. Therefore, further investigation of access rights would be of assistance in resolving disputes and informing potential future legislation.

European constitutions provided a challenge because customary law cannot be identified by many of the same indicators that are used elsewhere in the world. There are not necessarily such distinct 'indigenous' communities with systems juxtaposed to colonial arrangements. With the author's limited knowledge of the historical background of the European countries, many constitutional provisions appeared ambiguous as to whether they in fact referred to 'customary law' as defined in this study. The provisions discussed above in relation to European constitutions may not, therefore, adequately represent the extent of European constitutional recognition of customary law. Customary law may be recognized by statute, but no such statutory provisions were identified during the course of this study. Therefore, further study on the form and status of customary law in European countries would be advantageous.

Although religious and customary law are two separate bodies of law, the two may have a strong influence on each other. In particular, the precepts of any religion may impact the way that a community relates to the environment, thus affecting the customary rules that they formulate in governance of natural resources. The author located two papers discussing the relationship between customary and religious law in the course of compiling the bibliography in Annex C;<sup>262</sup> however, further research would be beneficial in understanding natural resource management by such communities.

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<sup>262</sup> See for example: Zerner, C. 1994. Through a Green Lens: The Construction of Customary Environmental Law and Community in Indonesia's Maluku Islands. *Law & Society Review* 28(5): 1079-1122; von Benda-Beckmann, F. and von Benda-Beckmann, K. 2006. Changing One is Changing All: Dynamics in the Adat-Islam-State triangle. *Journal of Legal Pluralism and Unofficial Law* 53-54:239

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## Annex A – Bibliography of constitutional provisions

Region	Constitution	Scope of Provision	Source and Access
Africa	Algeria 1989	Art 31: The aim of the institutions is to ensure equality of rights and duties of all citizens, men and women, by removing the obstacles which hinder the progress of human beings and impede the effective participation of all in the political, economic, social and cultural life.	Official text: <a href="http://www.conseil-constitutionnel.dz/indexAng.htm">http://www.conseil-constitutionnel.dz/indexAng.htm</a>
Africa	Angola 2010	Art 7: The validity and legal force of custom which does not contradict the Constitution and does not threaten human dignity shall be recognised. Art 92: (2) The state shall recognise and protect the right of rural communities to use and benefit from the means of production, under the terms of the Constitution, the law and customary law. Art 164: The National Assembly shall have exclusive power to legislate on the following matters:... (f) The basic elements of the system for the organisation and functioning of local government and the involvement of citizens and traditional authorities in its work Art 213: (2) The forms of local government organisation shall include local authorities, the institutions of the traditional authorities and other specific forms of citizen participation, under the terms of the law. Art 223: (1) The state shall recognise the status, role and functions of the institutions of the traditional authorities founded in accordance with customary law which do not contradict the Constitution. (2) Recognition of the institutions of the traditional authorities shall oblige public and private entities to respect, in their relations with these institutions, the values and norms of customary law that are observed within traditional political and community organisations and do not conflict with the Constitution or the dignity of the human person. Art 224: The traditional authorities shall be the entities which personify and exercise power within the respective political and community organisations, in accordance with the values and norms of customary law and respecting the Constitution and the law. Art 225: The attributions, responsibilities, organisation, system of control, liability and assets of the institutions of the traditional authorities, their institutional relations with state local administration and local authority administration bodies and the types of traditional authorities shall be regulated by law.	Unofficial text: <a href="http://www.wipo.int/wipolex/en/text.jsp?file_id=196468">http://www.wipo.int/wipolex/en/text.jsp?file_id=196468</a>
Africa	Benin 1990	Art 10: Every person has a right to culture. The state has the duty to safeguard and promote the national values of civilizations, as much material as spiritual, as well as the cultural traditions. Art 11: All communities comprising the Beninese nation shall enjoy the freedom to use their spoken and written languages and to develop their own culture while respecting those of others. The State must promote the development of national languages of intercommunication.	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;p;docid=3ae6b57d4&amp;skip=0&amp;coi=BEN&amp;amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;p;docid=3ae6b57d4&amp;skip=0&amp;coi=BEN&amp;amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
Africa	Botswana 1966	S 10: (12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of— ... (b) subsection (2)(d) or (2)(e) of this section [ <i>protection of law</i> ] to the extent that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under customary law (being proceedings against any person who, under that law, is subject to that law). S 15: (4) Subsection (1) of this section [ <i>prohibiting discriminatory laws</i> ] shall not apply to any law so far as that law makes provision— ... (d) for the application in the case of members of a particular race, community or tribe of customary law with respect to any matter whether to the exclusion of any law in respect to that matter which is applicable in the case of other persons or not. S 65: (2) The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable: Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of natural community of interest, means of communication, geographical features, density of population, and the boundaries of Tribal Territories and administrative districts. S 77: (1) There shall be a Ntlo ya Dikgosi [ <i>House of Chiefs</i> ] for Botswana which shall consist of not less than 33 nor more than 35 Members which shall be constituted as follows— (a) one person from each of the following areas, which person for the time being performs the functions of the office of Kgosi [ <i>Chief</i> ] in respect of such areas- (i) Barolong Farms in the Southern District, (ii) Chobe in the North West District, (iii) Ga Malete in the South East District, (iv) Ga Mmangwato in the Central District, (v) Ghanzi District, (vi) Goo Tawana in the North West District, (vii) Kgalagadi District, (viii) Kgatleng District, (ix) Kweneng District, (x) Ngwaketse in the Southern District, (xi) North East District, and (xii) Tlokweng in the South East District; (b) five persons who shall be appointed by the President; and (c) such number of persons, not being more than	Official text: <a href="http://www.laws.gov.bw/">http://www.laws.gov.bw/</a>

Region	Constitution	Scope of Provision	Source and Access
		<p>20, as may be selected under section 78(4)(c) of this Constitution.</p> <p>S 85: (1) The Ntlo ya Dikgosi shall consider the copy of any Bill which has been referred to it under the provisions of section 88(2) of this Constitution and the Ntlo ya Dikgosi shall be entitled to submit resolutions thereon to the National Assembly. (2) Any resolution which has been submitted to the National Assembly in accordance with the last foregoing subsection shall forthwith be laid before the Assembly by the Clerk of the Assembly. (3) Any Minister who is responsible for a Bill such as is referred to in subsection (1) of this section, or his or her representative, may attend the proceedings of the Ntlo ya Dikgosi when the copy of the Bill is being considered. (4) Any Minister may consult the Ntlo ya Dikgosi in respect of any matter on which he or she desires to obtain the opinion of the Ntlo ya Dikgosi, and for that purpose the Minister or his or her representative may attend the proceedings of the Ntlo ya Dikgosi. (5) The Ntlo ya Dikgosi shall be entitled to discuss any matter within the executive or legislative authority of Botswana of which it considers it is desirable to take cognizance in the interests of the tribes and tribal organizations it represents and to make representations thereon to the President, or to send messages thereon to the National Assembly. (6) A person attending the proceedings of the Ntlo ya Dikgosi by virtue of the provisions of subsection (3) or (4) of this section shall be entitled to take part in the proceedings of the Ntlo ya Dikgosi relating to the matter in respect of which he or she attends as if he or she were a Member of the Ntlo ya Dikgosi: Provided that he or she shall not be entitled to vote in the Ntlo ya Dikgosi.</p> <p>S 88: (2) The National Assembly shall not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, would, if enacted, alter any of the provisions of this Constitution or affect— (a) the designation, recognition, removal of powers of Dikgosi or Dikgosana [<i>Chiefs or Sub-Chiefs</i>]; (b) the organization, powers or administration of customary courts; (c) customary law, or the ascertainment or recording of customary law; or (d) tribal organization or tribal property, unless— (i) a copy of the Bill has been referred to the Ntlo ya Dikgosi after it has been introduced in the National Assembly; and (ii) a period of 30 days has elapsed from the date when the copy of the Bill was referred to the Ntlo ya Dikgosi.</p>	
Africa	Burkina Faso 1991	Nil	Unofficial text: <a href="http://www.kituoachakatiba.org/index2.php?option=com_docman&amp;task=doc_view&amp;gid=120&amp;Itemid=36">http://www.kituoachakatiba.org/index2.php?option=com_docman&amp;task=doc_view&amp;gid=120&amp;Itemid=36</a>
Africa	Burundi 2005	<p>Preamble: Proud of its national, linguistic and cultural unity, which constitute the enrichment of its personality</p> <p>Art 7: Everyone has the right to have access to the sources of knowledge. The Republic guarantees to children and adults access to instruction, to culture, and to professional training. The education and instruction of the youth must be provided for by public establishments. The creation of these are incumbent upon the state and the other public collectivities. Private establishments may be opened with the authorisation of the state. This is only accorded when these private establishments by their curriculum and their organisation, as well as the matter of the development of their instruction, fulfil sufficient conditions to dispense an instruction of a quality conforming with official programmes or authorised within the conditions fixed by a specific law. They are placed under the control of the state.</p> <p>Art 13: The freedom to inform, to express and diffuse opinions by speech, the pen and image, under reservation of respect of the rights of others, is guaranteed. Privacy of correspondence as well as that of postal, electronic, telegraphic and telephonic communications are inviolable. Restrictions may only be prescribed for the above by application of a law. Freedom of the press is recognised and guaranteed. It is exercised within the conditions fixed by law. The exercise of this liberty and equal access for all to the medias of the state are assured by an independent organ, the status of which is fixed by law. The freedom of intellectual, artistic and cultural creation is recognised and guaranteed. It is exercised within the conditions fixed by law.</p>	Unofficial text: <a href="http://www.chanrobles.com/burundi1.html">http://www.chanrobles.com/burundi1.html</a>
Africa	Cameroon 1996	<p>Preamble: <i>Affirm</i> our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto, in particular, to the following principles: ... - the State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in</p>	Unofficial text: <a href="http://confinder.richmond.edu/admin/docs/Cameron.pdf">http://confinder.richmond.edu/admin/docs/Cameron.pdf</a>

Region	Constitution	Scope of Provision	Source and Access
		accordance with the law	
Africa	Cape Verde 1992	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5bd0&amp;skip=0&amp;coi=CPV&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5bd0&amp;skip=0&amp;coi=CPV&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	Central African Republic 2004	Nil	Unofficial text <a href="http://www.kituoachakatiba.org/index2.php?option=com_docman&amp;task=doc_view&amp;gid=126&amp;Itemid=27">http://www.kituoachakatiba.org/index2.php?option=com_docman&amp;task=doc_view&amp;gid=126&amp;Itemid=27</a>
Africa	Chad 1996	Art 26: Customary and traditional rules concerning collective penal responsibility are forbidden. Art 161: Until their codification, customary and traditional rules are applicable only in the communities where they are recognised. However, those customs contrary to the public order or those which promote inequality between citizens are forbidden. Art 162: Customary or traditional rules dictating matrimonial regimes and inheritances may be applied only with the consent of the parties concerned. The same applies in case of conflict between two or more customary rules. Art 163: Customary or traditional reparation may not be an obstacle to public action.	Unofficial text: <a href="http://confinder.richmond.edu/admin/docs/Chad1995English.pdf">http://confinder.richmond.edu/admin/docs/Chad1995English.pdf</a>
Africa	Comoros 2001	Nil	Unofficial text: <a href="http://www.constitutionnet.org/files/Comoros%20Constitution.pdf">http://www.constitutionnet.org/files/Comoros%20Constitution.pdf</a>
Africa	Congo 2002	Nil	Unofficial text: <a href="http://www.wipo.int/wipolex/en/details.jsp?id=7450">http://www.wipo.int/wipolex/en/details.jsp?id=7450</a>
Africa	Cote d'Ivoire 2000	Preamble: Conscious of their ethnic, cultural and religious diversity, and desirous to build one nation unified in solidarity and prosperous Art 7: Every human being has the right to the development and to the full realization of his personality in the material, intellectual and spiritual dimensions. The State assures to all citizens equal access to health, to education, to culture, to information, to professional formation and to employment. The State has the duty to safeguard and to promote the national values of civilization as well as the cultural traditions not contrary to the law and to good morals. Art 71: The National Assembly holds the legislative power. It alone votes the law. The law establishes the rules concerning: ... the procedure according to which customs are certified and harmonized with the fundamental principles of the constitution.	Unofficial text: <a href="http://abidjan.usembassy.gov/ivoirian_constitutio n2.html">http://abidjan.usembassy.gov/ivoirian_constitutio n2.html</a>
Africa	Democratic Republic of the Congo 2005	Art 3: Paragraph 1: The provinces and the decentralized territorial entities of the Democratic Republic of the Congo possess legal personality and are managed by local authorities. Paragraph 2: These decentralized territorial entities are the city, the commune, the sector and the chiefdom ( <i>la chefferie</i> ). Paragraph 3: They enjoy administrative freedom and managerial autonomy with regard to their economic, human, financial and technical resources. Paragraph 4: The composition, organization and functioning of these decentralized territorial entities as well as their relations with the State and the provinces are determined by organic law. Art 34: Paragraph 2: The State guarantees the right to individual or collective property acquired in accordance with law or custom. Art 63: Paragraph 3: All national, provincial, local and customary authorities have the duty to safeguard the unity of the Republic and the integrity of its territory, subject to punishment for high treason. Art 153: Paragraph 4: The civil and military courts and tribunals apply the duly ratified international treaties, the laws and regulatory measures, provided that they are in conformity with the laws as well as customary law unless the latter is contrary to public order or morality. Art 203: Without prejudice to the other provisions of this Constitution, the following matters are subject to the concurring competence of the Central Authority and the Provinces: ... (2) civil and customary rights.	Unofficial text: <a href="http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf">http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf</a>



Region	Constitution	Scope of Provision	Source and Access
		Art 204: Without prejudice to the other provisions of this Constitution, the following matters are subject to the exclusive competence of the Provinces: ... (28) the execution of customary law. Art 207: Paragraph 1: The customary authority is recognized. Paragraph 2: It is transferred in conformity with local custom, provided that the latter is not contrary to the Constitution, the law, public order and morality. Paragraph 3: Each customary Chief who desires to exercise an elective public function must submit himself to an election, unless the provisions of Article 198, paragraph 3 of this Constitution are applicable. The customary authority has the duty to promote national unity and cohesion. Paragraph 4: A law establishes the status of the customary Chiefs.	
Africa	Djibouti 1992	Nil	Unofficial text: <a href="http://www.pogar.org/publications/other/constitutions/dj-constitution-92-e.pdf">http://www.pogar.org/publications/other/constitutions/dj-constitution-92-e.pdf</a>
Africa	Egypt 1971	Art 12: The society shall be committed to safeguarding and protecting morals, promoting the genuine Egyptian traditions and abiding by the high standards of religious education, moral and national values, historical heritage of the people, scientific facts, socialist conduct and public morality within the limits of the law. The State is committed to abiding by these principles and promoting them.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5368&amp;skip=0&amp;coi=EGY&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5368&amp;skip=0&amp;coi=EGY&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	Equatorial Guinea 1991	Item 4: The official language of the Republic of Equatorial Guinea shall be Spanish; aboriginal languages shall be recognized as an integral part of its national culture.	Unofficial text: <a href="http://confinder.richmond.edu/admin/docs/EquatorialGuinea1991English.pdf">http://confinder.richmond.edu/admin/docs/EquatorialGuinea1991English.pdf</a>
Africa	Eritrea 1997	Nil	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3dd8aa904&amp;skip=0&amp;coi=ERI&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3dd8aa904&amp;skip=0&amp;coi=ERI&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	Ethiopia 1995	Art 9: (1) The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect. Art 34: (4) In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted. (5) This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law. Art 35: (4) The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited. Art 78: (5) Pursuant to sub-article 5 of Article 34 the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution. Art 91: (1) Government shall have the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the provisions of the Constitution.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5a84&amp;skip=0&amp;coi=ETH&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5a84&amp;skip=0&amp;coi=ETH&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	Gabon 1991	Nil	Unofficial text: <a href="http://democratie.francophonie.org/IMG/pdf/Gabon.pdf">http://democratie.francophonie.org/IMG/pdf/Gabon.pdf</a>

Region	Constitution	Scope of Provision	Source and Access
Africa	Gambia 1997	<p>S 7: In addition to this Constitution, the laws of The Gambia consist of: ... (e) customary law so far as concerns the members of the communities to which it applies.</p> <p>S 22: (4) where a compulsory acquisition of land by or on behalf of the Government involves the displacement of any inhabitant who occupy the land under customary law, the Government shall resettle the displaced inhabitants on suitable alternative land with due regard to their economic well being and social and cultural values.</p> <p>S 32: Every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and to the condition that the right protected by this section do not impinge on the rights and freedoms of others or the national interest, especially unity.</p> <p>S 33: Subsection (2) [<i>prohibiting discriminatory laws</i>] shall not apply to any law in so far as that law makes provision- ... (d) for the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.</p>	<p>Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=4811c33f2&amp;skip=0&amp;coi=GMB&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=4811c33f2&amp;skip=0&amp;coi=GMB&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a></p>
Africa	Ghana 1992	<p>Art 11: (2) The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature. (3) For the purposes of this article, "customary law" means the rules of law which by custom are applicable to particular communities in Ghana.</p> <p>Art 26: (1) Every person is entitled to enjoyed, practise, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution. (2) All customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited.</p> <p>Art 125: (2) Citizens may exercise popular participation in the administration of justice through the institutions of public and customary tribunals and the jury and assessor systems.</p> <p>Art 267: (1) All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage ... (3) There shall be no disposition or development of any stool land unless the Regional Lands Commission of the region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned.</p> <p>Art 270: (1) The institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed. (2) Parliament shall have no power to enact any law which- (a) confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever; or (b) in any way detracts or derogates from the honour and dignity of the institution of chieftaincy. (3) Nothing in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, clause (1) or (2) of this article if the law makes provision for- (a) the determination, in accordance with the appropriate customary law and usage, by a traditional council, a Regional House of Chiefs or a Chieftaincy Committee of any of them, of the validity of the nomination, election, selection, installation or deposition of a person as a chief; (b) a traditional council or a Regional House of Chiefs or the National House of Chiefs to establish and operate a procedure for the registration of chiefs and the public notification in the Gazette or otherwise of the status of persons as chiefs in Ghana.</p> <p>Art 272: The National House of Chiefs shall - (a) advise any person or authority charged with any responsibility under this Constitution or any other law for any matter relating to or affecting chieftaincy; (b) undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin; (c) undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful; (d) perform such other functions, not being inconsistent with any function assigned to the House of Chiefs of a region, as Parliament may refer to it.</p> <p>Art 274: (1) There shall be established in and for each region of Ghana a Regional House of Chiefs ... (3) A Regional House of Chiefs shall - (a) perform such functions as may be conferred upon it by or under an Act of Parliament; (b) advise any person or authority charged under this Constitution or any other law with any Sresponsibility for any matter relating to or affecting chieftaincy in the region; (c) hear and determine</p>	<p>Official text: <a href="http://www.parliament.gh/constitution_republic_ghana.html">http://www.parliament.gh/constitution_republic_ghana.html</a></p>

Region	Constitution	Scope of Provision	Source and Access
		appeals from the traditional councils within the region in respect of the nomination, election, selection, installation or deposition of a person as a chief; (d) have original jurisdiction in all matters relating to a paramount stool or skin or the occupant of a paramount stool or skin, including a queenmother to a paramount stool or skin; (e) undertake a study and make such general recommendations as are appropriate for the resolution or expeditious disposition of chieftaincy disputes in the region; (f) undertake the compilation of the customary laws and lines of succession applicable to each stool or skin in the region.	
Africa	Guinea-Bissau 1984	Nil	Unofficial text: <a href="http://www.constitutionnet.org/files/Guinea-Bissau%20Constitution.pdf">http://www.constitutionnet.org/files/Guinea-Bissau%20Constitution.pdf</a>
Africa	Kenya 2010	<p>Art 2: (4) Any law, including customary law that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.</p> <p>Art 7: (3) The State shall— ... (b) promote the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.</p> <p>Art 11: (1) This Constitution recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. (2) The State shall— (a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage; (b) recognise the role of science and indigenous technologies in the development of the nation. (3) Parliament shall enact legislation to— (a) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage; and (b) recognise and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya.</p> <p>Art 21: (3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.</p> <p>Art 45: (4) Parliament shall enact legislation that recognises— (a) marriages concluded under any tradition, or system of religious, personal or family law; and (b) any system of personal and family law under any tradition, or adhered to by persons professing a particular religion, to the extent that any such marriages or systems of law are consistent with this Constitution.</p> <p>Art 56: The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups— (a) participate and are represented in governance and other spheres of life; ... (d) develop their cultural values, languages and practices; and (e) have reasonable access to water, health services and infrastructure.</p> <p>Art 60: (1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles - ... (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and (g) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.</p> <p>Art 63: (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. (2) Community land consists of— ... (d) land that is— ... (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities... but not including any public land held in trust by the county government under Article 62 (2). (3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held. (4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively. (5) Parliament shall enact legislation to give effect to this Article.</p> <p>Art 67: (1) There is established the National Land Commission. (2) The functions of the National Land Commission are— ... (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts.</p>	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=4c8508822&amp;amp;skip=0&amp;amp;coi=KEN&amp;amp;querysi=constitution&amp;amp;searchin=title&amp;amp;display=10&amp;amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=4c8508822&amp;amp;skip=0&amp;amp;coi=KEN&amp;amp;querysi=constitution&amp;amp;searchin=title&amp;amp;display=10&amp;amp;sort=date</a>

Region	Constitution	Scope of Provision	Source and Access
		<p>Art 69: (1) The State shall— ... (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities</p> <p>Art 100: Parliament shall enact legislation to promote the representation in Parliament of— ... (e) marginalised communities</p> <p>Art 159: (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles— ... (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3). (3) Traditional dispute resolution mechanisms shall not be used in a way that— (a) contravenes the Bill of Rights; (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or (c) is inconsistent with this Constitution or any written law.</p> <p>Art 177: (1) A county assembly consists of— ... (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament</p> <p>Art 201: The following principles shall guide all aspects of public finance in the Republic— ... (b) the public finance system shall promote an equitable society, and in particular— ... (iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas</p> <p>Art 204: (1) There is established an Equalisation Fund into which shall be paid one half per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly. (2) The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.</p> <p>Art 260: In this Constitution, unless the context requires otherwise— “marginalised community” means... (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or (d) pastoral persons and communities, whether they are— (i) nomadic; or (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.</p>	
Africa	Lesotho 1993	<p>S 7: (6) Nothing contained in or done under the authority of any provision of the customary law of Lesotho shall be held to be inconsistent with or in contravention of this section [<i>freedom of movement</i>] to the extent that that provision authorises the imposition of restrictions upon any person's freedom to reside in any part of Lesotho.</p> <p>S 18: (4) Subsection (1) [<i>prohibiting discriminatory laws</i>] shall not apply to any law to the extent that that law makes provision - ... (c) for the application of the customary law of Lesotho with respect to any matter in the case of persons who, under that Act law, are subject to that law.</p> <p>S 45: (1) The College of Chiefs may at any time designate, in accordance with the customary law of Lesotho, the person (or the persons, in order of prior right) who are entitled to succeed to the office of King upon the death of the holder of, or the occurrence of any vacancy in, that office and if on such death or vacancy, there is a person who has previously been designated in pursuance of this section and who is capable under the customary law of Lesotho of succeeding to that office, that person (or, if there is more than one such person, that one of them who has been designated as having the first right to succeed to the office) shall become King.</p> <p>S 46: (1) The College of Chiefs may at any time designate, in accordance with the customary law of Lesotho, the person (or the persons, in order of prior right) who shall be Regent, that is to say, who shall exercise the functions of the office of King in any of the following circumstances ...</p> <p>S 154: (1) In this Constitution, unless the context otherwise requires - ... "customary law" means the customary law of Lesotho for the time being in force subject to any modification or other provision made in respect thereof by any Act of Parliament; ... "law" includes - (i) any instrument having the force of law made in exercise of a power conferred by a law; and (ii) the customary law of Lesotho and any other unwritten</p>	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b57e4&amp;skip=0&amp;coi=LSO&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b57e4&amp;skip=0&amp;coi=LSO&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>

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		rule of law, and "lawful" and "lawfully" shall be construed accordingly.	
Africa	Liberia 1986	<p>Art 2: This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic. Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional.</p> <p>Art 23: (b) The Legislature shall enact laws to govern the devolution of estates and establish rights of inheritance and descent for spouses of both statutory and customary marriages so as to give adequate protection to surviving spouses and children of such marriages.</p> <p>Art 65: The Judicial Power of the Republic shall be vested in a Supreme Court and such subordinate courts as the legislature may from time to time establish. The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature. Judgements of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of Government. Nothing in this Article shall prohibit administrative consideration of the Justiciable matter prior to review by a court of competent jurisdiction.</p>	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b6030&amp;skip=0&amp;coi=LBR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b6030&amp;skip=0&amp;coi=LBR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	Libyan Arab Jamahiriya 1969	Nil	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5a24&amp;skip=0&amp;coi=LBY&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5a24&amp;skip=0&amp;coi=LBY&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	Madagascar 2010	<p>Preamble: Convinced of the need for Malagasy society to find again its originality, its authenticity and its "Malagasity", and to enter into the modern millennium while conserving its fundamental traditional values and principles based on "fanahy" Malagasy which includes "ny fihavanana, ny fifanajana, ny fitandroana ny aina, ny marimaritra iraisana"</p> <p>Art 1: Malagasy society inherits ancestral wisdom based on "fanahy malagasy", which makes possible "fihavanana", a framework of life that permits "living together" regardless of region, origin, ethnicity, religion or sex.</p> <p>Art 2: (1) The Circle for the Preservation of Fihavanana (Seha-piahiana ny Fihavanana) sees to the prevention of crises and conflict of all kinds that could affect the ancestral virtues and values among Malagasys with a view to preserving national unity. (2) The Circle for the Preservation of Fihavanana is composed of Raiamandreny [elders] or Olobe [non-hereditary post, appointed by the king] representing, men and women equally, traditional and socio-professional associations or organizations of all autonomous provinces of the Republic. The Raiamandreny, or Olobe, are chosen for their moral reputation and their competence in valuing traditional culture and acquired knowledge, on one hand, and in preventing and resolving conflicts on the other hand. (3) In order to value culture and traditional acquired knowledge [and] resolve and prevent conflicts, the Circle for the Preservation of Fihavanana may be seized of all authority, all public power, all political parties, all groups and associations of civil society [to deal with] grave risks attacking Malagasy society. It employs all the means possible to avoid the rupture of Malagasy internal societal links. (4) In cases of deterioration of Fihavanana, accompanied by crimes or misdemeanors against health or life, the Circle for the Preservation of Fihavanana may, in order to re-establish Fihavanana, establish three committees to assist: an inquiry and truth committee, a repent and pardon committee, a reparation and indemnification committee. (5) Concerning the persons alleged to have committed crimes, misdemeanors, errors and omissions that involve victims and a deterioration of Fihavanana, and those who are recognized to be guilty of having done so, the Circle for the Preservation of Fihavanana, after a process of verifying the truth, proposes to the Government and to Parliament the cases for which an amnesty law would be appropriate and the cases in which a demand for amnesty does not constitute a confession.</p> <p>Art 39: The Fokonolona, organized in Fokontany, is the basis for development and for socio-cultural and environmental cohesion. The Fokonolona may take appropriate measures to oppose acts that would destroy or damage the environment, dispossess lands, [and] seize spaces traditionally used for cattle herds</p>	Unofficial translation by Patricia Moore. Unofficial text (in French): <a href="http://aceproject.org/ero-en/regions/africa/MG/madagascar-2010-constitution-2011-french/view">http://aceproject.org/ero-en/regions/africa/MG/madagascar-2010-constitution-2011-french/view</a>

Region	Constitution	Scope of Provision	Source and Access
		or for rituals, as long as these measures do not affect general interests and public order. The scope and modalities of these measures as well as the powers of the Fokonolona are determined by law.	
Africa	Malawi 1994	<p>S 10: (2) In the application and formulation of any Act of Parliament and in the application and development of the common law and customary law, the relevant organs of State shall have due regard to the principles and provisions of this Constitution.</p> <p>S 20: (1) Discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.</p> <p>S 22: (5) Sub-sections (3) [<i>right to marry</i>] and (4) [<i>no forced marriage</i>] shall apply to all marriages at law, custom and marriages by repute or by permanent cohabitation.</p> <p>S 24: (2) Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly practices such as - (a) sexual abuse, harassment and violence; (b) discrimination in work, business and public affairs; and (c) deprivation of property, including property obtained by inheritance.</p> <p>S 110: (3) Parliament may make provision for traditional or local courts presided over by lay persons or chiefs: Provided that the jurisdiction of such courts shall be limited exclusively to civil cases at customary law and such minor common law and statutory offences as prescribed by an Act of Parliament.</p> <p>S 200: Except in so far as they are inconsistent with this Constitution, all Acts of Parliament, common law and customary law in force on the appointed day shall continue to have force of law, as if they had been made in accordance with and in pursuance of this Constitution: Provided that any laws currently in force may be amended or repealed by an Act of Parliament or be declared unconstitutional by a competent court.</p>	Official text: <a href="http://www.sdn.org.mw/constitut/dtlinde.html">http://www.sdn.org.mw/constitut/dtlinde.html</a>
Africa	Mali 1992	Nil	Unofficial text: <a href="http://confinder.richmond.edu/admin/docs/Mali.pdf">http://confinder.richmond.edu/admin/docs/Mali.pdf</a>
Africa	Mauritania 1991	Nil	Unofficial text (?): <a href="http://www.servat.unibe.ch/icl/mr00000_.html">http://www.servat.unibe.ch/icl/mr00000_.html</a>
Africa	Mauritius 1968	Nil	Official text: <a href="http://www.gov.mu/portal/site/AssemblySite/menuitem.ee3d58b2c32c60451251701065c521ca/">http://www.gov.mu/portal/site/AssemblySite/menuitem.ee3d58b2c32c60451251701065c521ca/</a>
Africa	Morocco 1996	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5454&amp;skip=0&amp;coi=MAR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5454&amp;skip=0&amp;coi=MAR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	Mozambique 1990	<p>Art 81: (2) The right of popular action shall consist of: ... (b) The right to advocate the prevention, termination or judicial prosecution of offences against the public health, consumer rights, environmental conservation and cultural heritage.</p> <p>Art 115: (1) The State shall promote the development of national culture and identity and shall guarantee free expression of the traditions and values of Mozambican society. (2) The State shall promote the dissemination of Mozambican culture and shall take action to enable the Mozambican people to benefit from the cultural achievements of other peoples.</p> <p>Art 118: (1) The State shall recognise and esteem traditional authority that is legitimate according to the people and to customary law. (2) The State shall define the relationship between traditional authority and other institutions and the part that traditional authority should play in the economic, social and cultural affairs of the country, in accordance with the law.</p> <p>Art 119: (4) The law shall establish forms in which traditional and religious marriage shall be esteemed, and determine the registration requirements and effects of such marriage.</p>	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4a1e597b2&amp;skip=0&amp;coi=MOZ&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4a1e597b2&amp;skip=0&amp;coi=MOZ&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>

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Africa	Namibia 1990	<p>Art 4: (3) The following persons shall be citizens of Namibia by marriage: ... (b) for the purposes of this Sub-Article (and without derogating from any effect that it may have for any other purposes) a marriage by customary law shall be deemed to be a marriage: provided that nothing in this Constitution shall preclude Parliament from enacting legislation which defines the requirements which need to be satisfied for a marriage by customary law to be recognised as such for the purposes of this Sub-Article.</p> <p>Art 12: (1)(f) No persons shall be compelled to give testimony against themselves or their spouses, who shall include partners in a marriage by customary law, and no Court shall admit in evidence against such persons testimony which has been obtained from such persons in violation of Article 8(2)(b) hereof.</p> <p>Art 19: Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.</p> <p>Art 66: (1) Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law. (2) Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods.</p> <p>Art 102: (5) There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.</p>	<p>Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=47175fd361&amp;skip=0&amp;coi=NAM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=47175fd361&amp;skip=0&amp;coi=NAM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a></p>
Africa	Niger 2010	<p>Art 99: The law establishes the rules concerning: ... the procedure according to which customs are certified and harmonized with the fundamental principles of the constitution.</p> <p>Art 167: The State recognizes the institution of traditional chiefs as the depositary of customary authority. In this capacity, this traditional institution participates in the administration of the territory of the Republic under the conditions determined by law. The institution of traditional chiefs is held to a strict obligation of neutrality and reserve. It is protected against all abuse of power that tends to turn it away from the role conferred on it by law.</p>	<p>Unofficial translation by Patricia Moore. Unofficial text (in French): <a href="http://mjp.univ-perp.fr/constit/ne2010.htm">http://mjp.univ-perp.fr/constit/ne2010.htm</a></p>
Africa	Nigeria 1999	<p>S 237: (2) The Court of Appeal shall consist of - ... (b) such number of Justices of the Court of Appeal, not less than forty-nine of which not less than three shall be learned in Islamic personal law, and not less than three shall be learned in Customary law, as may be prescribed by an Act of the National Assembly.</p> <p>S 245: (1) An appeal shall lie from decisions of a customary Court of Appeal to the Court of Appeal as of right in any civil proceedings before the customary Court of Appeal with respect to any question of Customary law and such other matters as may be prescribed by an Act of the National Assembly. (2) Any right of appeal to the Court of Appeal from the decisions of a Customary Court of Appeal conferred by this section shall be - (a) exercisable at the instance of a party thereto or, with the leave of the Customary Court of Appeal or of the Court of Appeal, at the instance of any other person having an interest in the matter; (b) exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.</p> <p>S 265: (1) There shall be a Customary Court of Appeal of the Federal Capital Territory, Abuja. (2) The Customary Court of Appeal of the Federal Capital Territory, Abuja shall consist of - (a) a President of the Customary Court of Appeal; and (b) such number of Judges of the Customary Court of Appeal as may be prescribed by an Act of the National Assembly.</p> <p>S 280: (1) There shall be for any State that requires it a Customary Court of Appeal for that State. (2) The Customary Court of Appeal of a State shall consist of - (a) a President of the Customary Court of Appeal of the State; and (b) such number of Judges of the Customary Court of Appeal as may be prescribed by the House of Assembly of the State.</p> <p>S 282: (1) A Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involve questions of Customary law. (2) For the purpose of this section, a Customary Court of Appeal of a State shall exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established.</p> <p>S 288:(1) In exercising his powers under the foregoing provisions of this Chapter in respect of appointments</p>	<p>Official text (?): <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=44e344fa4&amp;skip=0&amp;coi=NGA&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=44e344fa4&amp;skip=0&amp;coi=NGA&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a></p>

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		to the offices of Justices of the Supreme court and Justices of the Court of Appeal, the President shall have regard to the need to ensure that there are among the holders of such offices persons learned in Islamic personal law and persons learned in Customary law. (2) For the purposes of subsection (1) of this section - ... (b) a person shall be deemed to be learned in Customary law if he is a legal practitioner in Nigeria and has been so qualified for a period of not less than fifteen years in the case of a Justice of the Supreme Court or not less than twelve years in the case of a Justice of the Court of Appeal and has in either case and in the opinion of the National Judicial Council considerable knowledge of and experience in the practice of Customary law.	
Africa	Rwanda 2003	Art 51: The State has the duty to safeguard and to promote positive values based on cultural traditions and practices so long as they do not conflict with human rights, public order and good morals. The State equally has the duty to preserve the national cultural heritage as well as genocide memorials and sites. Art 145: The jurisdiction of the Supreme Court is provided for in this Constitution and other laws and includes, inter alia: ... (11) to provide authentic interpretation of custom which is unwritten and in respect of which the written law is silent. Art 201: Laws and regulations can only enter into force after they have been duly published in accordance with the procedures determined by the law. Ignorance of a law which has been duly published is not a defence. Unwritten customary law remains applicable as long as it has not been replaced by written laws, is not inconsistent with the Constitution, laws and regulations, and does not violate human rights, prejudice public order or offend public decency and morals.	Official text: <a href="http://www.mod.gov.rw/?Constitution-of-the-Republic-of">http://www.mod.gov.rw/?Constitution-of-the-Republic-of</a>
Africa	Sao Tome and Principe 2003	Nil	Unofficial text: <a href="http://www.wipo.int/wipolex/en/details.jsp?id=5830">http://www.wipo.int/wipolex/en/details.jsp?id=5830</a>
Africa	Senegal 2001	Nil	Unofficial text: <a href="http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20SenegalC%20_english%20summary__rev_.pdf">http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20SenegalC%20_english%20summary__rev_.pdf</a>
Africa	Seychelles 1993	Art 39: (1) The state recognises the right of every person to take part in cultural life and to profess, promote, enjoy and protect the cultural and customary values of the Seychellois people subject to such restrictions as may be provided by law and necessary in a democratic society including - (a) the protection of public order, public morals and public health; (b) the prevention of crime; (c) the protection of the rights and freedoms of other persons. (2) The state undertakes to take reasonable steps to ensure the preservation of the cultural heritage and values of the Seychellois people.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5002b&amp;skip=0&amp;coi=SYC&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5002b&amp;skip=0&amp;coi=SYC&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	Sierra Leone 1991	S 27: (4) Subsection (1) [ <i>prohibiting discriminatory laws</i> ] shall not apply to any law so far as that law makes provision— ... (e) for the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons. S 38: (3) The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable. Provided that the number of inhabitants of such a constituency may be greater or less than the population quota in order to take account of means of communications, geographical features, density of population, the distribution of different communities, the areas and boundaries of the Chiefdoms and other administrative or traditional areas. S 72: (1) The institution of Chieftaincy as established by customary law and usage and its non-abolition by legislation is hereby guaranteed and preserved. (2) Without derogating from the generality of the provisions of subsection (1), no provision of law in so far as it provides for the abolition of the office of Paramount Chief as existing by customary law and usage immediately before the entry into force of this Constitution, shall have effect unless it is included in an Act of Parliament and the provisions of Section 108 shall apply in relation to the Bill for such an Act as they apply in relation to the Bill for an Act of Parliament that alters any of the provisions of this Constitution that are referred to in subsection (3) of that section. (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5b94&amp;skip=0&amp;coi=SLE&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5b94&amp;skip=0&amp;coi=SLE&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>



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		<p>of, the provisions of subsection (1) to the extent that the law in question makes provision for the determination, in accordance with appropriate customary law and usage, of the validity of the nomination, election, unseating or replacement of any Paramount Chief, or the question of restraining in any way the exercise of any rights, duties, privileges or functions conferred upon, or enjoyed by him, by virtue of his office or the installation or deposition of a person as a Paramount Chief. (4) A Paramount Chief may be removed from office by the President for any gross misconduct in the performance of the functions of his office if after a public inquiry conducted under the Chairmanship of a Judge of the High Court or a Justice of Appeal or a Justice of the Supreme Court, the Commission of Inquiry makes an adverse finding against the Paramount Chief, and the President is of the opinion that it is in the public interest that the Paramount Chief should be removed. (5) Subject to the provisions of this Constitution and in furtherance of the provisions of this section, Parliament shall make laws for the qualifications, election, powers, functions, removal and other matters connected with the Chieftaincy.</p> <p>S 120: (4) The Judicature shall consist of the Supreme Court of Sierra Leone, the Court of Appeal and the High Court of Justice which shall be the superior courts of record of Sierra Leone and which shall constitute one Superior Court of Judicature, and such other inferior and traditional courts as Parliament may by law establish.</p> <p>S 170: (2) The common law of Sierra Leone shall comprise the rules of law generally known as the common law, the rules of law generally known as the doctrines of equity, and the rules of customary law including those determined by the Superior Court of Judicature. (3) For the purposes of this section the expression "customary law" means the rules of law which by custom are applicable to particular communities in Sierra Leone.</p> <p>S 171: (1) in this Constitution unless a contrary intention appears— ... "law" includes— ... (b) customary law and any other unwritten rules of law.</p>	
Africa	Somalia 2004 (note: transitional charter only)	<p>Art 1:1: (3) The Government shall encourage the unity of the Somali people by promoting their cultures, customs and traditions.</p> <p>Art 24: (6) The Government shall encourage the promotion of scientific research, the arts and their advancement as well as the folklore and sports and shall promote positive customs and traditions of the Somali people.</p> <p>Art 30: (1) The Parliament envisaged under article 28 above shall be appointed as follows; ... (c) Selection shall be undertaken in a transparent manner and the Political Leaders, Politicians and Traditional Leaders are called upon to play their roles; (d) Having ensured full endorsement of the traditional leaders to the compiled list of selected MPs, the Somali Management 85 Facilitation Committee will further submit the said list to the IGAD Facilitation Committee within the timeframe specified.</p> <p>Art 71: (5) The Transitional Federal Government shall devote the necessary efforts to restore peace and security, free movement of people, goods and services, disarmament and collection of illegal weapons in the hands of the public for safekeeping rehabilitation and reintegration of all militia in co-operation with regional administrations, traditional elders and members of the international community.</p>	Official text (?): <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4795c2d22&amp;skip=0&amp;coi=SOM&amp;querysi=transitional%20federal%20charter&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4795c2d22&amp;skip=0&amp;coi=SOM&amp;querysi=transitional%20federal%20charter&amp;searchin=title&amp;display=10&amp;sort=date</a>

Region	Constitution	Scope of Provision	Source and Access
Africa	South Africa 1996	<p>S 15: (3) This section [<i>freedom of conscience, religion, thought, belief and opinion</i>] does not prevent legislation recognising (i) marriages concluded under any tradition, or a system of religious, personal or family law; or (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion. (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.</p> <p>S 25: (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.</p> <p>S 31: (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community – (a) to enjoy their culture, practise their religion and use their language; and (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society. (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.</p> <p>S 39: (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights. (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.</p> <p>S 143: (1) A provincial constitution, or constitutional amendment, must not be inconsistent with this Constitution, but may provide for – ... (b) the institution, role, authority and status of a traditional monarch, where applicable.</p> <p>S 185: (1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are – (a) to promote respect for the rights of cultural, religious and linguistic communities; (b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and (c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa. (2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities. (3) The Commission may report any matter which falls within its powers and functions to the South African Human Rights Commission for investigation. (4) The Commission has the additional powers and functions prescribed by national legislation.</p> <p>S 211: (1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution. (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs. (3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.</p> <p>S 212: (1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities. (2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law – (a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and (b) national legislation may establish a council of traditional leaders.</p> <p>Sch 4 – Functional areas of concurrent national and provincial legislative competence: Indigenous and customary law, subject to Chapter 12 of the Constitution; ... Traditional leadership, subject to Chapter 12 of the Constitution.</p> <p>Sch 6 – Transitional arrangements; S 16: (1) Every court, including courts of traditional leaders, existing when the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the legislation applicable to it, and anyone holding office as a judicial officer continues to hold office in terms of the legislation applicable to that office, subject to – (a) any amendment or repeal of that legislation; and (b) consistency with the new Constitution.</p>	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5de4&amp;skip=0&amp;coi=ZAF&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5de4&amp;skip=0&amp;coi=ZAF&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>

Region	Constitution	Scope of Provision	Source and Access
Africa	Sudan 2005 (note: interim constitution only)	<p>Art 4: This Constitution is predicated upon and guided by the following principles:- ... (b) religions, beliefs, traditions and customs are the source of moral strength and inspiration for the Sudanese people.</p> <p>Art 5: (2) Nationally enacted legislation applicable to Southern Sudan or states of Southern Sudan shall have as its sources of legislation popular consensus, the values and the customs of the people of the Sudan, including their traditions and religious beliefs, having regard to Sudan's diversity. (3) Where national legislation is currently in operation or is to be enacted and its source is religion or custom, then a state, and subject to Article 26 (1) (a) [<i>principle of linkage between national government and states in Southern Sudan</i>] herein in the case of Southern Sudan, the majority of whose residents do not practice such religion or customs may:- (a) either introduce legislation so as to allow practices or establish institutions, in that state consistent with their religion or customs, or (b) refer the law to the Council of States to be approved by a two-thirds majority of all the representatives or initiate national legislation which will provide for such necessary alternative institutions as may be appropriate.</p> <p>Art 32: (3) The State shall combat harmful customs and traditions which undermine the dignity and the status of women.</p> <p>Art 47: Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures; members of such communities shall have the right to practice their beliefs, use their languages, observe their religions and raise their children within the framework of their respective cultures and customs.</p>	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=4ba749762&amp;skip=0&amp;coi=SDN&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=4ba749762&amp;skip=0&amp;coi=SDN&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	Swaziland 2005	<p>Preamble: Whereas it has become necessary to review the various constitutional documents, decrees, laws, customs and practices so as to promote good governance, the rule of law, respect for our institutions and the progressive development of the Swazi society; Whereas it is necessary to blend the good institutions of traditional Law and custom with those of an open and democratic society so as to promote transparency and the social, economic and cultural development of our Nation.</p> <p>S 4: (4) The King and iNgwenyama has such rights, prerogatives and obligation as are conferred on him by this Constitution or any other law, including Swazi law and custom, and shall exercise those rights, prerogatives and obligations in terms and in the spirit of this Constitution.</p> <p>S 5: (1) Succession to the office of King and iNgwenyama is hereditary and governed by this Constitution and Swazi law and custom. (2) Where the office of King and iNgwenyama becomes vacant the successor to the Throne shall be determined and declared in accordance with Swazi law and custom.</p> <p>S 21: (13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of – (b) subsection (2) (e) [<i>legal representation requirements</i>] to the extent that the law in question prohibits legal representation before a Swazi Court or before any Swazi court hearing appeals from such a court.</p> <p>S 26: (6) Nothing contained in or done under the authority of any provision of Swazi law and custom shall be held to be inconsistent with or in contravention of this section [<i>freedom of movement</i>] to the extent that the provision authorises the imposition of restrictions upon the freedom of any person to reside in any part of Swaziland.</p> <p>S 77: (3) The Attorney-General shall – ... (c) represent chiefs in their official capacity in legal proceedings.</p> <p>S 115: (1) A bill (including any amendment to a bill) which, in the opinion of the presiding officer would affect or alter any matter regulated in terms of this section shall be introduced in the Senate. (2) Where a bill, in terms of this section, is duly introduced the Senate shall not proceed to the Second Reading of that bill until – (a) a copy of that bill has been sent by the President to the Council of Chiefs, and (b) a period of sixty days has elapsed since the copy was sent to the Council in terms of paragraph (a). (3) Subject to the provisions of subsection (4), where a bill affecting or altering any of the matters referred to in this section has been introduced in and passed by the Senate and has been sent to the House at least sixty days before the end of the session but has not within that period been passed by both Chambers, the bill shall be referred to a joint sitting of the Senate and the House in accordance with the provisions of the First Schedule. (4) A bill having been duly introduced in and passed by the Senate shall not be referred to a joint sitting in terms of subsection (3) where the bill – (a) has been sent to the House at least sixty days before the end of the session, and (b) has not been considered by the House within sixty days after the bill is so</p>	Unofficial text: <a href="http://www.ide.uniswa.sz/documents/resources/constitution2004.pdf">http://www.ide.uniswa.sz/documents/resources/constitution2004.pdf</a>

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		<p>sent, but shall, unless the Senate otherwise agrees, be resented to the King for assent. (5) A bill shall not be presented to the King for assent in terms of subsection (4) unless the Senate so resolves by two-thirds majority of all the Senators. (6) The provisions of this section apply to a bill which, in the opinion of the presiding officer would, if enacted alter or affect – (a) the status, powers or privileges, designation or recognition of the <i>Ngwenyama</i>, <i>Ndlovukazi</i> or <i>Umntfwanenkhosi Lomkhulu</i>; (b) the designation, recognition, removal, powers, of chief or other traditional authority; (c) the organisation, powers or administration of the Swazi (customary) courts or chiefs' courts; (d) Swazi law and custom, or the ascertainment or recording of Swazi law and custom; (e) Swazi national land; or (f) <i>Incwala</i>, <i>Umhlanga</i> (Reed Dance), <i>Libutfo</i> (Regimental system) or similar cultural activity or organisation. (7) Subject to the provisions of this section, the matters listed under subsection (6) shall continue to be regulated by Swazi law and custom.</p> <p>S 151: (8) Notwithstanding subsection (1), the High Court has no original or appellate jurisdiction in matters relating to the office of iNgwenyama; the office of iNdlovukazi (the Queen mother);, the authorisation of a person to perform the functions of Regent in terms of section 8; the appointment, revocation and suspension of a Chief; the composition of the Swazi National Council, the appointment and revocation of appointment of the Council and the procedure of the Council; and the Libutfo (regimental) system, which matters shall continue to be governed by Swazi law and custom.</p> <p>S 227: (1) The Szawi traditional government is administered according to Swazi law and custom and the traditional institutions that are pillars of the monarchy as set out in subsection (2). (2) The following Swazi traditional institutions are hereby guaranteed and protected – (a) <i>iNgwenyama</i>; (b) <i>iNdlovukazi</i>; (c) <i>Ligunqa</i> (Princes of the Realm); (d) <i>Liqoqo</i>; (e) <i>Sibaya</i>; (f) (<i>Tikhulu</i>) Chiefs; (g) <i>Umntfwanenkhosi Lomkhulu</i> (Senior Prince); (h) <i>Tindvuna</i> (Royal Governors).</p> <p>S 251: (1) There shall be a Council of Chiefs which shall be composed of twelve Chiefs drawn from the four regions of the Kingdom appointed by the iNgwenyama on a rotational basis. (3) The Council of Chiefs shall be responsible for, among other things – (a) advising the King on customary issues and any matter relating to or affecting chieftancy including chieftancy disputes; (b) performing functions in terms of section 115 [<i>bills affecting nominated customary issues</i>]; (c) performing such other functions as may be assigned by this Constitution or any other law.</p> <p>S 252: (2) Subject to the provisions of this Constitution, the principles of Swazi customary law (Swazi law and custom) are hereby recognised and adopted and shall be applied and enforced as part of the law of Swaziland. (3) The provisions of subsection (2) do not apply in respect of any custom that is, and to the extent that it is, inconsistent with a provision of this Constitution or a statute, repugnant to natural justice or morality or general principles of humanity. (4) Parliament may- (a) provide for the proof and pleading of the rule of custom for any purpose; (b) regulate the manner in which or purpose for which custom may be recognised, applied or enforced; and (c) provide for the resolution of conflicts of customs or conflicts of personal laws.</p> <p>S 261: (1) In this Constitution unless the context otherwise requires – ... "law" includes any instruments having the force of law and any unwritten rule of law.</p> <p>S 268: (1) The existing law, after the commencement of this Constitution, shall as far as possible be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution. (2) For the purposes of this section, the expression "existing law" means the written and unwritten law including customary law of Swaziland as existing immediately before the commencement of this Constitution, including any Act of Parliament or subordinate legislation enacted or made before that date which is to come into force after that date.</p>	
Africa	Togo 1991	<p>Art 22: All Togolese citizens have the right to move about freely and to establish themselves within national territory anywhere they choose under the conditions defined by law or local custom.</p> <p>Art 84: The law establishes the rules concerning: ... the procedure according to which customs are certified and harmonized with the fundamental principles of the constitution; ... the integration of national cultural values...</p> <p>Art 141: The Togolese Republic is organized in territorial communities on the basis of the principle of decentralization with respect to national unity. These territorial communities are: communes, prefectures,</p>	<p>Unofficial translation by Patricia Moore, IUCN. Official text in French: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=48ef43c72&amp;skip=0&amp;coi=TGO&amp;quersy=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=48ef43c72&amp;skip=0&amp;coi=TGO&amp;quersy=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a></p>

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		and regions. Any other territorial community is created by law. The territorial communities are administered by councils elected by universal suffrage, under conditions established by law. Art 142: The State sees to the harmonious development of all territorial communities on the basis of national solidarity, regional potential and inter-regional balance. Art 143: The Togolese State recognizes the institution of traditional chiefs, guardian of habits and customs. The designation and the enthroning of traditional chiefs follow local habits and customs.	
Africa	Tunisia 1959	Nil	Unofficial text: <a href="http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004842.pdf">http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004842.pdf</a>
Africa	Uganda 1995	Art XXIV: Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy, and with the Constitution may be developed and incorporated in aspects of Ugandan life. The State shall – (i) promote and preserve those cultural values and practices which enhance the dignity and well-being of Ugandans; (ii) encourage the development, preservation and enrichment of all Ugandan languages; (iii) promote the development of a sign language for the deaf; and (iv) encourage the development of a national language or languages.. Art 2: (2) If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void. Art 37: Every person has a right as applicable, to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others. Art 237: (3) Land in Uganda shall be owned in accordance with the following land tenure systems – (a) customary; (b) freehold; (c) mailo; and (d) leasehold. (4) On the coming into force of this Constitution – (a) all Uganda citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament; and (b) land under customary tenure may be converted to freehold land ownership by registration. Art 246: (1) Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5ba0&amp;skip=0&amp;coi=UGA&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5ba0&amp;skip=0&amp;coi=UGA&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Africa	United Republic of Tanzania 1998	Nil	Official text: <a href="http://www.tanzania.go.tz/images/constitutioneng.pdf">http://www.tanzania.go.tz/images/constitutioneng.pdf</a>
Africa	Zambia 1996	Art 16: (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) [ <i>compulsory taking of property</i> ] to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover – ... (y) for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or of a policy designed to ensure that the statute law, the Common Law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or right enjoyed by Chiefs and persons claiming through and under them, shall apply with substantial uniformity throughout Zambia. Art 18: (12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of – (b) paragraph (d) of clause (2) [ <i>legal representation</i> ] to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law, being proceedings against any person who, under that law, is subject to that law. Art 23: (4) Clause (1) [ <i>protection from discrimination</i> ] shall not apply to any law so far as that law makes provision – (d) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons. Art 112: The following Directives shall be the Principles of State Policy for the purposes of this Part: (g) the State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom and language insofar as these are not inconsistent with this Constitution.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5610&amp;skip=0&amp;coi=ZMB&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5610&amp;skip=0&amp;coi=ZMB&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>

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		<p>Art 127: (1) Subject to the provisions of this Constitution, the Institution of Chief shall exist in any area of Zambia in accordance with the culture, customs and traditions or wishes and aspirations of the people to who it applies.</p> <p>Art 130: There shall be a House of Chiefs for the Republic which shall be an advisory body to the Government on traditional, customary and any other matters referred to it by the President.</p> <p>Art 131: Notwithstanding Article 130, the House of Chiefs may – (a) consider and discuss any Bill dealing with, or touching on, custom or tradition before it is introduced into the National Assembly; (b) initiate, discuss and decide on matters that relate to customary law and practice; (c) consider and discuss any other matter referred to it for its consideration by the President or approved by the President for consideration by the House; and (d) submit resolutions on any Bill or other matter referred to it to the President, and the President shall cause such resolutions to be laid before the National Assembly.</p>	
Africa	Zimbabwe 1979	<p>S 18: (15) For the purposes of this section [<i>protection of law</i>], a local court shall not be regarded as not being an independent and impartial court by reason of – (a) the fact that a member of the court has an interest in the proceedings because of his position in the tribal society; or (b) the traditional or customary tribal practices and procedures.</p> <p>S 22: (3) Nothing contained in or done under the authority of any law shall be held to in contravention of subsection (1) [<i>freedom of movement</i>] to the extent that the law in question makes provision – (f) for the imposition of restrictions on the residence within Communal Land of persons who are not tribespeople to the extent that such restrictions are reasonably required for the protection of the interests of tribespeople or their well-being.</p> <p>S 23: (3) Nothing contained in any law shall be held to be in contravention of subsection (1)(a) [<i>freedom from discrimination</i>] to the extent that the law in question relates to any of the following matters – (b) the application of African customary law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African customary law in that case; (f) the according to tribespeople to the exclusion of other persons of rights or privileges relating to Communal Land</p> <p>S 89: Subject to the provisions of any law for the time being in force in Zimbabwe relating to the application of African customary law, the law to be administered by the Supreme Court, the High Court and by any courts in Zimbabwe subordinate to the High Court shall be the law in force in the Colony of the Cape of Good Hope on 10th June, 1891, as modified by subsequent legislation having in Zimbabwe the force of law.</p> <p>S 111: (1) There shall be Chiefs to preside over the tribespeople in Zimbabwe who shall, subject to the provisions of subsection (2), be appointed by the President in accordance with an Act of Parliament. (2) An Act of Parliament shall provide that in appointing a Chief the President shall give due consideration to the customary principles of succession of the tribespeople over which the Chief will preside and may provide for the appointment of deputy Chiefs and acting Chiefs. (3) There shall be a Council of Chiefs which shall consist of such number of Chiefs elected by the Chiefs from each of the various areas of Communal Land in such manner as is prescribed by or under an Act of Parliament, so, however, as to secure as far as is practicable equitable representation for the various areas of Communal Land with due regard to the total number of tribespeople in each such area: Provided that an Act of Parliament may provide for the establishment of two or more Councils of Chiefs for separate areas of Communal Land. (4) The qualifications and disqualifications of candidates for election to any Council of Chiefs and the tenure of office of members thereof shall be as prescribed by or under an Act of Parliament.</p> <p>S 113: (1) In this Constitution, unless the context otherwise requires – ... “African customary law” means the tribal law and custom of Africans of a particular tribe; ... “law” means – (a) any provision of this Constitution or of an Act of Parliament; (b) any provision of a statutory instrument; and (c) any unwritten law in force in Zimbabwe, including African customary law; and “lawful” and “lawfully” shall be construed accordingly.</p>	Official text: <a href="http://www.parlzim.gov.zw/cms/UsefulResources/ZimbabweConstitution.pdf">http://www.parlzim.gov.zw/cms/UsefulResources/ZimbabweConstitution.pdf</a>
East Europe, North and	Albania 1998	Art 20: (1) Persons who belong to national minorities exercise in full equality before the law the human rights and freedoms. (2) They have the right to freely express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop it, to study	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=4c1f68912&amp;amp;skip=0&amp;amp;coi=ALB&amp;">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=4c1f68912&amp;amp;skip=0&amp;amp;coi=ALB&amp;</a>

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Central Asia		and to be taught in their mother tongue, as well as unite in organizations and societies for the protection of their interests and identity.	<a href="#">amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Armenia 2005	Art 11: Paragraph 1: Historical and cultural monuments and other cultural values are under the care and protection of the state. Paragraph 2: Within the framework of the principles and norms of the international law the Republic of Armenia shall contribute to fostering relations with the Armenian Diaspora, protecting the Armenian historical and cultural values located in other countries, advancing the Armenian education and culture. Art 40: Everyone shall have the right to freedom of literary, aesthetic, scientific and technical creation, to make use of the scientific advancement and to participate in the cultural life of the society. Art 41: Paragraph 1: Everyone shall have the right to preserve his or her national and ethnic identity. Paragraph 2: Persons belonging to national minorities shall have the right to preservation and development of their traditions, religion, language and culture.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=447ee4534&amp;skip=0&amp;coi=ARM&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=447ee4534&amp;skip=0&amp;coi=ARM&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Azerbaijan 1995	Art 40: Every Person shall have the right to participate in cultural life, make use of cultural institutions and cultural wealth. Every Person shall treat with respect historical, cultural and spiritual values, preserve them and protect cultural monuments.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b4fc0&amp;skip=0&amp;coi=AZE&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b4fc0&amp;skip=0&amp;coi=AZE&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Belarus 1994	Art 15: The State shall bear responsibility for preserving the historic and cultural heritage, and the free development of the cultures of all the ethnic communities that live in the Republic of Belarus. Art 52: Everyone in the territory of the Republic of Belarus shall abide by its Constitution and laws and respect national traditions.	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b5338&amp;skip=0&amp;coi=BLR&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b5338&amp;skip=0&amp;coi=BLR&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Bosnia and Herzegovina 1995	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b56e4&amp;skip=0&amp;coi=BIH&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b56e4&amp;skip=0&amp;coi=BIH&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Bulgaria 1991	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=44ae29d74&amp;skip=0&amp;coi=BGR&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=44ae29d74&amp;skip=0&amp;coi=BGR&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Croatia 1990	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b551c&amp;skip=0&amp;coi=HRV&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b551c&amp;skip=0&amp;coi=HRV&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Czech Republic 1992	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b52d0&amp;skip=0&amp;coi=CZE&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b52d0&amp;skip=0&amp;coi=CZE&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Estonia 1996	S 50: National minorities have the right, in the interests of national culture, to establish self-governing agencies under conditions and pursuant to procedure provided by the National Minorities Cultural Autonomy Act.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b56a4&amp;skip=0&amp;coi=EST&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b56a4&amp;skip=0&amp;coi=EST&amp;querysi=constitution&amp;searchin=title&amp;amp;display=10&amp;sort=date</a>
East Europe,	Georgia 1995	Art 34: (1) The state shall promote the development of culture, the unrestricted participation of citizens in cultural life, expression and enrichment of cultural originality, recognition of national and common values	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;</a>

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North and Central Asia		and deepening of international cultural relations. (2) Every citizen of Georgia shall be obliged to care for the protection and preservation of the cultural heritage. The state shall protect the cultural heritage by law.	p;docid=3ae6b5b10&skip=0&coi=GEO&querysi=constitution&searchin=title&display=10&sort=date
East Europe, North and Central Asia	Hungary 1949	Art 32B: (2) The Parliamentary Commissioner for the Rights of National and Ethnic Minorities shall be responsible for investigating or having investigated irregularities concerning the rights of national or ethnic minorities which come to his attention and initiating general or specific measures for their remedy. Art 68: (1) The national and ethnic minorities living in the Republic of Hungary shall be parts of the sovereignty of the people: they shall be constituent factors of the State. (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities. She shall ensure their collective participation in public affairs, the fostering of their cultures, the use of their own languages, education in their own languages and the use of names in their own languages. (3) The laws of the Republic of Hungary shall ensure representation of the national and ethnic minorities living within the country. (4) National and ethnic minorities shall have the right to form local and national self-governments. (5) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the statute on the rights of national and ethnic minorities.	Official text (?): <a href="http://www.mkab.hu/index.php?id=constitution">http://www.mkab.hu/index.php?id=constitution</a>
East Europe, North and Central Asia	Kazakhstan 1995	Art 19: (2) Everyone shall have the right to use his native language and culture, to freely choose the language of communication, education, instruction and creative activities.	Official text: <a href="http://www.parlam.kz/en/constitution">http://www.parlam.kz/en/constitution</a>
East Europe, North and Central Asia	Kyrgyzstan 2010	Preamble: ...based on precepts (behests) of our ancestors to live in peace and concord, and in harmony with nature Art 37, S 1: National customs and traditions that do not infringe upon the rights and freedoms of a person are supported by the state. Art 37, S 2: Everyone must respect elders and support his/her relatives. Art 52, S 2: Citizens have the right to hold the national "kurultai" on issues of the state and public importance. The decision of the national "kurultai" is to be submitted to corresponding state agency as recommendation. The rules of conducting of the national "kurultai" is defined by (separate) law. Art 59: Citizens have the right to establish the "aksakal's" courts. The rules of creation of the "aksakal's" courts and their authorities and activities are defined by (separate) law.	Translation by Zura Akmatova Based on unofficial text: <a href="http://www.kyrgyz-el.kg/index.php?option=com_content&amp;task=view&amp;id=245&amp;Itemid=1&amp;lang=russian">http://www.kyrgyz-el.kg/index.php?option=com_content&amp;task=view&amp;id=245&amp;Itemid=1&amp;lang=russian</a>
East Europe, North and Central Asia	Latvia 1922	Art 114: Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=4c3c58892&amp;skip=0&amp;coi=LVA&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=4c3c58892&amp;skip=0&amp;coi=LVA&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Lithuania 1992	Art 37: Citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs. Art 45: Ethnic communities of citizens shall independently manage the affairs of their ethnic culture, education, charity, and mutual assistance. Ethnic communities shall be provided support by the State.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3ae6b59d8&amp;skip=0&amp;coi=LTU&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3ae6b59d8&amp;skip=0&amp;coi=LTU&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Montenegro 2007	Art 79: Persons belonging to minority nations and other minority national communities shall be guaranteed the rights and liberties, which they can exercise individually or collectively with others, as follows: (1) the right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities; (2) the right to choose, use and publicly post national symbols and to celebrate national holidays; (3) the right to use their own language and alphabet in private, public and official use; (4) the right to education in their own language and alphabet in public institutions and the right to have included in the curricula the history and culture of the persons belonging to minority nations and other minority national communities; (5) the right, in the areas with significant share in the total population, to have the local self-government authorities, state and court authorities carry out the proceedings in the language of minority nations and	Official text: <a href="http://www.skupstina.me/cms/site_data/16122009/USTAV%20CG-engleska%20verzija.pdf">http://www.skupstina.me/cms/site_data/16122009/USTAV%20CG-engleska%20verzija.pdf</a>



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		other minority national communities; (6) the right to establish educational, cultural and religious associations, with the material support of the state; (7) the right to write and use their own name and surname also in their own language and alphabet in the official documents; (8) the right, in the areas with significant share in total population, to have traditional local terms, names of streets and settlements, as well as topographic signs written in the language of minority nations and other minority national communities; (9) the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action; (10) the right to proportionate representation in public services, state authorities and local self-government bodies; (11) the right to information in their own language; (12) the right to establish and maintain contacts with the citizens and associations outside of Montenegro, with whom they have common national and ethnic background, cultural and historic heritage, as well as religious beliefs; (13) the right to establish councils for the protection and improvement of special rights.	
East Europe, North and Central Asia	Poland 1997	Art 35: (1) The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture. (2) National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5574&amp;skip=0&amp;coi=POL&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5574&amp;skip=0&amp;coi=POL&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Republic of Moldova 1994	Art 10: (2) The State recognizes and guarantees all its citizens the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity.	Official text (?): <a href="http://www.constcourt.md/index_en.html">http://www.constcourt.md/index_en.html</a>
East Europe, North and Central Asia	Romania 1991	Art 6: (1) The State recognizes and guarantees the right of persons belonging to national minorities, to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity. (2) The protecting measures taken by the Romanian State for the preservation, development, and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens. Art 41: (6) The right of property compels to the observance of duties relating to environmental protection and ensurance of neighborliness, as well as of other duties incumbent upon the owner, in accordance with the law or custom.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b53c4&amp;skip=0&amp;coi=ROM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b53c4&amp;skip=0&amp;coi=ROM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Russian Federation 1993	Art 69: The Russian Federation shall guarantee the rights of indigenous small peoples in accordance with the universally recognized principles and norms of international law and international treaties of the Russian Federation. Art 72: (1) The following shall be within the joint jurisdiction of the Russian Federation and constituent entities of the Russian Federation: ... (b) protection of human and civil rights and freedoms, protection of the rights of national minorities, ensuring lawfulness, law and order, public security; border zone regimes; ... (l) protection of the traditional habitat and the traditional way of life of small ethnic communities. Art 131: (1) Local self-government shall be administered in urban and rural settlements and on other territories with due consideration to historical and other local traditions. The structure of bodies of local self-government shall be determined by the population independently.	Official text: <a href="http://www.constitution.ru/en/10003000-01.htm">http://www.constitution.ru/en/10003000-01.htm</a>
East Europe, North and Central Asia	Serbia 2006	Art 48: The Republic of Serbia shall promote understanding, recognition and respect of diversity arising from specific ethnic, cultural, linguistic or religious identity of its citizens through measures applied in education, culture and public information. Art 75: Persons belonging to national minorities shall be guaranteed special individual or collective rights in addition to the rights guaranteed to all citizens by the Constitution. Individual rights shall be exercised individually and collective rights in community with others, in accordance with the Constitution, law and international treaties. Persons belonging to national minorities shall take part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages and script through their collective rights in accordance with the law. Persons belonging to national minorities	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4b5579202&amp;skip=0&amp;coi=SRB&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4b5579202&amp;skip=0&amp;coi=SRB&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>

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		<p>may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law.</p> <p>Art 77: Members of national minorities shall have the right to participate in administering public affairs and assume public positions, under the same conditions as other citizens. When taking up employment in state bodies, public services, bodies of autonomous province and local self-government units, the ethnic structure of population and appropriate representation of members of national minorities shall be taken into consideration.</p> <p>Art 78: Forced assimilation of members of national minorities shall be strictly prohibited. Protection of members of national minorities from all activities directed towards their forced assimilation shall be regulated by the Law. Undertaking measures, which would cause artificial changes in ethnic structure of population in areas where members of national minorities live traditionally and in large numbers, shall be strictly prohibited.</p> <p>Art 79: Members of national minorities shall have a right to: expression, preservation, fostering, developing and public expression of national, ethnic, cultural, religious specificity; use of their symbols in public places; use of their language and script; have proceedings also conducted in their languages before state bodies, organisations with delegated public powers, bodies of autonomous provinces and local self-government units, in areas where they make a significant majority of population; education in their languages in public institutions and institutions of autonomous provinces; founding private educational institutions; use of their name and family name in their language; traditional local names, names of streets, settlements and topographic names also written in their languages, in areas where they make a significant majority of population; complete, timely and objective information in their language, including the right to expression, receiving, sending and exchange of information and ideas; establishing their own mass media, in accordance with the Law. Under the Law and in accordance with the Constitution, additional rights of members of national minorities may be determined by provincial regulations.</p> <p>Art 80: Members of national minorities may found educational and cultural associations, which are funded voluntarily. The Republic of Serbia shall acknowledge a specific role of educational and cultural associations of national minorities in their exercise of rights of members of national minorities. Members of national minorities shall have a right to undisturbed relations and cooperation with their compatriots outside the territory of the Republic of Serbia.</p>	
East Europe, North and Central Asia	Slovakia 1992	<p>Art 34: (1) Citizens of national minorities or ethnic groups in the Slovak Republic shall be guaranteed their full development, particularly the rights to promote their cultural heritage with other citizens of the same national minority or ethnic group, receive and disseminate information in their mother tongues, form associations, and create and maintain educational and cultural institutions. Details thereof shall be fixed by law. (2) In addition to the right to learn the official language, the citizens of national minorities or ethnic groups shall, under provisions fixed by law, also be guaranteed: (a) the right to be educated in a minority language, (b) the right to use a minority language in official communications, (c) the right to participate in decision-making in matters affecting the national minorities and ethnic groups. (3) The exercise of rights by citizens of a national minority guaranteed by this Constitution may not threaten the sovereignty and territorial integrity of the Slovak Republic or discriminate against other citizens.</p>	Official text (?): <a href="http://www.vop.gov.sk/en/legal_basis/constitution.html">http://www.vop.gov.sk/en/legal_basis/constitution.html</a>
East Europe, North and Central Asia	Slovenia 1991	<p>Art 5: In its own territory, the state shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. It shall maintain concern for autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland. It shall provide for the preservation of the natural wealth and cultural heritage and create opportunities for the harmonious development of society and culture in Slovenia. Slovenes not holding Slovene citizenship may enjoy special rights and privileges in Slovenia. The nature and extent of such rights and privileges shall be regulated by law.</p> <p>Art 64: The autochthonous Italian and Hungarian national communities and their members shall be guaranteed the right to use their national symbols freely and, in order to preserve their national identity, the right to establish organisations and develop economic, cultural, scientific and research activities, as well as activities in the field of public media and publishing. In accordance with laws, these two national</p>	Official text: <a href="http://www.us-rs.si/media/full.text.of.the.constitution.pdf">http://www.us-rs.si/media/full.text.of.the.constitution.pdf</a>

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		<p>communities and their members have the right to education and schooling in their own languages, as well as the right to establish and develop such education and schooling. The geographic areas in which bilingual schools are compulsory shall be established by law. These national communities and their members shall be guaranteed the right to foster relations with their nations of origin and their respective countries. The state shall provide material and moral support for the exercise of these rights. In order to exercise their rights, the members of these communities shall establish their own self-governing communities in the geographic areas where they live. On the proposal of these self-governing national communities, the state may authorise them to perform certain functions under national jurisdiction, and shall provide funds for the performing of such functions. The two national communities shall be directly represented in representative bodies of local self-government and in the National Assembly. The position of the Italian and Hungarian national communities and the manner in which their rights are exercised in the geographic areas where they live, the obligations of the self-governing local communities for the exercise of these rights, and those rights which the members of these national communities exercise also outside these areas, shall all be regulated by law. The rights of both national communities and their members shall be guaranteed irrespective of the number of members of these communities. Laws, regulations and other general acts that concern the exercise of the constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities.</p>	
East Europe, North and Central Asia	Tajikistan 1994	Nil	Unofficial text (?): <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b50910&amp;skip=0&amp;coi=TJK&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b50910&amp;skip=0&amp;coi=TJK&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	The Former Yugoslav Republic of Macedonia 1991	<p>Art 48: Members of nationalities have a right freely to express, foster and develop their identity and national attributes. The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of the nationalities. Members of the nationalities have the right to establish institutions for culture and art, as well as scholarly and other associations for the expression, fostering and development of their identity. Members of the nationalities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in the language of a nationality, the Macedonian language is also studied.</p>	Official text: <a href="http://www.sobranie.mk/en/default-en.asp?ItemID=9F7452BF44EE814B8DB897C1858B71FF">http://www.sobranie.mk/en/default-en.asp?ItemID=9F7452BF44EE814B8DB897C1858B71FF</a>
East Europe, North and Central Asia	Turkmenistan 1992	Nil	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3df0739a4&amp;skip=0&amp;coi=TKM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3df0739a4&amp;skip=0&amp;coi=TKM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
East Europe, North and Central Asia	Ukraine 1996	<p>Art 11: The State shall promote the consolidation and development of the Ukrainian nation, its historical consciousness, traditions, and culture, as well as development of ethnic, cultural, linguistic, and religious identity of all indigenous peoples and national minorities of Ukraine.  Art 92: The following are determined exclusively by the laws of Ukraine: ... (3) the rights of indigenous peoples and national minorities  Art 140: Local self-governing shall be the right of a territorial community - residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city - for the purposes of an independent settlement of issues of local character in compliance with the Constitution and laws of Ukraine. Particular aspects of the exercise of local self-governing in the cities of Kyiv and Sevastopol shall be determined by the special laws of Ukraine. Local self-governing shall be exercised by a territorial community in compliance with a procedure established by law, both directly and through local self-government bodies: village, settlement and city radas, and their executive bodies. Rayon and oblast radas shall be the bodies of local self-government representing the common interests of territorial communities of villages, settlements, and cities. The issues of organisation of the administration of city districts shall fall within the competence of city radas. Village, settlement, and city radas may permit, at the initiative of residents, the establishment of house, street, block, or other bodies of popular self-</p>	Official text: <a href="http://gska2.rada.gov.ua/site/const_eng/constituton_eng.htm">http://gska2.rada.gov.ua/site/const_eng/constituton_eng.htm</a>

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		organisation, and assign them a part of their own competence, finances, or property.	
East Europe, North and Central Asia	Uzbekistan 1991	Art 4: The state language of the Republic of Uzbekistan shall be Uzbek. The Republic of Uzbekistan shall ensure a respectful attitude toward the languages, customs and traditions of all nationalities and ethnic groups living on its territory, and create the conditions necessary for their development.	Official text: <a href="http://www.gov.uz/en/constitution/">http://www.gov.uz/en/constitution/</a>
Meso and South America	Argentina 1853	S 75: Congress is empowered:... (17) To recognize the ethnic and cultural pre-existence of indigenous peoples of Argentina. To guarantee respect for the identity and the right to bilingual and intercultural education; to recognize the legal capacity of their communities, and the community possession and ownership of the lands they traditionally occupy; and to regulate the granting of other lands adequate and sufficient for human development; none of them shall be sold, transmitted or subject to liens or attachments. To guarantee their participation in issues related to their natural resources and in other interests affecting them. The provinces may jointly exercise these powers.	Official text: <a href="http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_ingles.pdf">http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_ingles.pdf</a>
Meso and South America	Belize 1981	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b57f4&amp;skip=0&amp;coi=BLZ&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b57f4&amp;skip=0&amp;coi=BLZ&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Meso and South America	Bolivia 2009	Art 2: Given the pre-colonial existence of the indigenous originary farmer nations and people and their ancestral domain over their territories, their free determination is guaranteed within the framework of the unity of the State, which consists in their right to autonomy, to self-government, to their culture, to the recognition of their institutions and to the consolidation of their territorial entities, in accordance to this Constitution and to the law. Art 5: (I) The official languages of the State are the Spanish language and all of the languages of the indigenous originary farmer nations and people, that include the languages aymara, araona, naure, bésiro, canichana, cavineño, cayubaba, chácobo, chimán, ese ejia, guaraní, guarasu'we, guarayu, itonama, leco, machajuyai-kallawaya, machineri, maropa, mojeño-trinitario, mojeño-ignaciano, moré, mosetén, movima, pacawara, puquina, quechua, sirionó, tacana, tapiete, toromona, uru-chipaya, weenhayek, yaminawa, yuki, yuracaré and zamuco. (II) The plurinational Government and the departmental governments must use at least two of the official languages. One of them must be the Spanish language, and the other will be decided considering the use, convenience, circumstances, and needs and preferences of the total population or the territory in question. The rest of the autonomous governments must use the own languages of their territories, and one of them must be the Spanish language. Art 11: (II) Democracy is exercised in the following forms, which will all be developed by the law: ... (3) Communitarian, by means of the election, appointment or nomination of authorities and representatives by the own norms and procedures of the indigenous originary farmer nations and people, among others, according to Law. Art 26: (II) The right of participation includes: ... (3) Where communitarian democracy is practiced, the electoral processes will be exercised according to their own norms and procedures, supervised by the Electoral Organ, as long as the electoral act is not subjected to equal, universal, direct, individual, secret, free and obligatory vote. (4) The election, appointment and direct nomination of the representatives of the indigenous originary farmer nations and people, in accordance with their own norms and procedures. Art 30: (I) The indigenous originary farmer nations and people constitute the human collective groups that share cultural identity, language, historical tradition, institutions, territoriality, and cosmovisions, with an existence prior to the Spanish colonial invasion. (II) Within the framework of the State's unity and in accordance with this Constitution the indigenous originary farmer nations and people enjoy the following	Unofficial text: <a href="http://www.bolivianconstitution.com/">http://www.bolivianconstitution.com/</a>

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		<p>rights: (1) To exist freely. (2) To their cultural identity, religious creed, spiritualities, practices and customs, and to their own cosmovision. (3) To have the cultural identity of each of its members, if wanted, be registered alongside the Bolivian citizenship in its identity document, passport or other identification document with legal validity. (4) To free determination and territoriality. (5) To have their institutions be part of the general structure of the State. (6) To the collective titling of lands and territories. (7) To the protection of their sacred places. (8) To create and manage their own systems, mediums and networks of communication. (9) To have their traditional knowledge and intelligence, their traditional medicine, their languages, their rituals and their symbols and clothing valued, respected and promoted. (10) To live in a healthy environment, with an adequate handling and use of the ecosystems. (11) To the collective intellectual property of their intelligence, sciences and knowledge, as well as their valuation, use, promotion and development. (12) To an intracultural, intercultural and plurilingual education in all of the educational system. (13) To the universal and gratuitous health system that respects its cosmovision and traditional practices. (14) To the exercise of their political, legal and economic systems according to their cosmovision. (15) To be consulted by means of the appropriate procedures, and in particular through their institutions, every time legislative or administrative measures susceptible of affecting them are anticipated. Within this framework, the right to an obligatory prior consultation will be respected and guaranteed, conducted by the State, in good faith and in an agreed manner, regarding the exploitation of non-renewable natural resources within the territory where are settled. (16) To a participation of the benefits resulting from the exploitation of natural resources in their territories. (17) To autonomous indigenous territory administration, and to the use and exclusive management of the renewable natural resources existent in their territories without prejudice of the rights legitimately acquired by third persons. (18) To participation in the organs and institutions of the State. (III) The State guarantees, respects and protects the rights of the indigenous originary farmer nations and people established in this Constitution and in the law.</p> <p>Art 31: (I) The indigenous originary nations and people in danger of extinction, in situation of voluntary isolation and not contacted, will be protected and respected in their individual and collective ways of life. (II) The indigenous originary nations and people in isolation and not contacted enjoy the right to maintain that condition, to the delimitation and legal consolidation of the territory they occupy and live in.</p> <p>Art 35: (II) The health system is unique and it includes the traditional medicine of the indigenous originary farmer nations and people.</p> <p>Art 42: (I) It is the responsibility of the State to promote and guarantee the respect, use, investigation and practice of traditional medicine, recovering the ancestral knowledge and practices starting from the thoughts and values of all of the indigenous originary farmer nations and people. (II) The promotion of traditional medicine will incorporate the registration of natural medicines and their active principles, as well the protection of its knowledge as intellectual, historic, and cultural property, and as the patrimony of the indigenous originary farmer nations and people. (III) The law will regulate the exercise of traditional medicine and will guarantee the quality of its service.</p> <p>Art 80: (II) Education will contribute to strengthening the unity and identity of all persons as part of the Plurinational State, as well as the identity and cultural development of the members of each indigenous originary farmer nation or town, and the intercultural understanding and enrichment within the State.</p> <p>Art 83: Social participation, communitarian participation and that of the parents within the educational system are recognized and guaranteed, through representative organisms in all levels of the State and in the indigenous originary farmer nations and people. Its compositions and attributions will be established by law.</p> <p>Art 86: Educational centers will recognize and guarantee freedom of conscience, faith and religious teachings, as well as the spirituality of the indigenous originary farmer nations and people, and will foster respect and mutual co-habitation among people of diverse religious options, without dogmatic imposition. The religious option of any male and female student will not be reason to discriminate their acceptance and permanency in these centers.</p> <p>Art 91: (I) Superior education develops the professional formation processes, of generation and revelation of knowledge oriented towards the integral development of society, for which takes into account universal</p>	

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		<p>knowledge and collective understanding of the indigenous originary farmer nations and people.</p> <p>Art 95: (II) The universities will have to implement programs for the recovery, preservation, development, learning and disclosure of the different languages of the indigenous originary farmer nations and people.</p> <p>Art 98: (I) Cultural diversity forms part of the essential foundation of the Plurinational Communitarian State. Interculturality is the instrument of cohesion and harmonious and balanced conviviality amongst all peoples and nations. Interculturality will respect differences within equal conditions. (II) The State assumes the existence of originary indigenous farmer cultures as reservoirs of values, knowledge, spirituality and cosmovisions. (III) It will be the fundamental responsibility of the State to preserve, develop, protect and promote the cultures existent in the country.</p> <p>Art 100: (I) It is the patrimony of the indigenous originary farmer nations and peoples the cosmovisions, the myths, the oral history, the dances, the cultural practices, the knowledge and traditional technologies. This patrimony forms part of the expression and identity of the State. (II) The State will protect the learning and knowledge by means of the corresponding intellectual property registration that safeguards the intangible rights of the indigenous originary farmer nations and people and the intercultural and afro-Bolivian communities.</p> <p>Art 103: (III) The State, the universities, the public and private productive service companies, and the indigenous originary farmer nations and people, will develop and coordinate investigation, innovation, promotion, revelation, application and transfer of science and technology processes to strengthen the productive base and encourage the integral development of society, in accordance to law.</p> <p>Art 119: (I) During legal proceedings, the parties in conflict enjoy equal opportunities to exercise the faculties and rights that may serve in their benefit, whether in an ordinary process or in an indigenous originary farmer one.</p> <p>Art 146: (IV) The number of Deputies must reflect the proportional voting obtained by each party, citizen group or indigenous people. ... (VII) The special indigenous originary farmer electoral districts will be ruled by the principle of population density in each department. They must not transcend the departmental limits. They will only establish themselves in rural areas, and in those departments in which the indigenous originary farmer nations and people constitute a minority segment. The Electoral Organ will determine the special electoral districts. These electoral districts form part of the total number of deputies.</p> <p>Art 147: (II) In the election of assembly members the proportional participation of the indigenous originary farmer nations and people will be guaranteed. (III) The law will determine the special indigenous originary farmer electoral districts, where neither the population density, nor the geographic continuity can be considered as conditional criteria.</p> <p>Art 179: (I) The judicial function is unique. The ordinary jurisdiction is exercised by the Supreme Court of Justice, the departmental courts of justice, the sentencing courts and the judges; the agro-environmental jurisdiction is exercised by the Agro-Environmental Court and its judges; and the indigenous originary farmer jurisdiction is exercised by their own authorities; there will be specialized jurisdictions regulated by the law. (II) The ordinary jurisdiction and the indigenous originary farmer jurisdiction enjoy the same hierarchy.</p> <p>Art 190: (I) The indigenous originary farmer nations and people will exercise their jurisdictional functions and competency through their authorities, and will apply their own principles, cultural values, norms and own procedures. (II) The indigenous originary farmer jurisdiction respects the right to life, the right to defense and the rest of the rights and guarantees established in the Constitution herein.</p> <p>Art 191: (I) The indigenous originary farmer jurisdiction is based on the specific link between the individuals who are members of the corresponding indigenous originary farmer nation or people. (II) The indigenous originary farmer jurisdiction is exercised in the following areas of personal, material and territorial effect: (1) The members of the indigenous originary farmer nation or people are subject to this jurisdiction, whether acting as plaintiffs or defendants, claimants or accusers, denounced or accused, or appellants or respondents. (2) This jurisdiction knows the indigenous originary farmer matters in accordance to what is established in the Law of Jurisdictional Demarcation. (3) This jurisdiction is applied to the relations and legal acts that are conducted or to the effects produced within the jurisdiction of the indigenous originary farmer</p>	

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		<p>nation or people.</p> <p>Art 192: (I) Every public authority or person will obey the decisions of the indigenous originary farmer jurisdiction. (II) For the compliance of the decisions of the indigenous originary farmer jurisdiction, its authorities can request the support of the competent organs of the State. (III) The State will promote and strengthen the indigenous originary farmer justice. The Law of Jurisdictional Demarcation will determine the mechanisms of coordination and cooperation between the indigenous originary farmer jurisdiction with the ordinary jurisdiction and the agro-environmental jurisdiction and with all of the constitutionally recognized jurisdictions.</p> <p>Art 197: (I) The Plurinational Constitutional Court will consist of the male and female Magistrates elected on a basis of plurinationality, with representation from the ordinary system and the indigenous originary farmer system.</p> <p>Art 199: (II) The male or female candidates for the Plurinational Constitutional Court will be proposed by organizations of civil society and of the indigenous originary farmer nations and people.</p> <p>Art 202: The attributions of the Plurinational Constitutional Court are, besides those established by the Constitution and the law, to know and resolve: ... (8) The consultations of the indigenous originary farmer authorities regarding the application of their legal norms as applied in a specific case. The decision of the Constitutional Court is mandatory. ... (11) The conflict of competency between the indigenous originary farmer jurisdiction and the ordinary and agro-environmental jurisdictions.</p> <p>Art 206: (II) The Supreme Electoral Court is composed of seven members, all who remain in their functions during six years without the possibility of re-election, and at least to of which will be of indigenous originary farmer origin. ... (V) The Departmental Legislative Assemblies or Departmental Councils will select by two thirds vote of its members present, a list for each of the voting members of the Departmental Electoral Courts. From these lists the Chamber of Deputies will elect the members of the Departmental Electoral Courts, by two thirds vote of its members present, guaranteeing that at least one of its members belongs to an indigenous originary farmer nation or people from the Department.</p> <p>Art 209: The male or female candidates for elected public positions, with the exception of the eligible positions of the Judicial Organ and the Plurinational Constitutional Court will be proposed through the organizations of indigenous originary farmer nations and people, citizens groups and political parties, in equality of conditions and in accordance to law.</p> <p>Art 210: (I) The organization and functioning of the organizations of indigenous originary farmer nations and people, citizens groups and political parties has to be democratic. ... (III) The organizations of indigenous originary farmer nations and people can elect their male or female candidates in accordance to their own norms of communitarian democracy.</p> <p>Art 211: (I) The indigenous originary farmer nations and people can elect their political representatives in the corresponding instances, in accordance with their own forms of election. (II) The Electoral Organ will supervise that the election of male or female authorities, representatives and candidates of the indigenous originary farmer nations and people through their own norms and procedures, is conducted in strict compliance with the norms of those nations and peoples.</p> <p>Art 218: (II) The Public Defender will also promote the defense of the rights of the indigenous originary farmer nations and people, of the urban and intercultural communities, and of male and female Bolivians who are abroad.</p> <p>Art 255: (II) The negotiation, subscription and ratification of international relations will be guided by the principles of: ... (4) Respect for the rights of the indigenous originary farmer nations and people.</p> <p>Art 264: (I) The State will establish a permanent policy of harmonic, integral, sustainable and strategic development of the frontiers, with the goal of improving the living conditions of its population, and especially the indigenous originary farmer nations and people living on the border.</p> <p>Art 265: (II) The state will strengthen the integration of its indigenous originary farmer nations and people with the indigenous people of the world.</p> <p>Art 269: (I) Bolivia is organized territorially into departments, provinces, municipalities and indigenous originary farmer territories. (II) The creation, modification and demarcation of the territorial units will be</p>	

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		<p>made by the democratic will of their inhabitants, in accordance with the conditions established in the Constitution and the law. (III) The regions will form part of the territorial organization, in the terms and conditions set forth by law.</p> <p>Art 270: The principles that govern the territorial organization and the decentralized and autonomous territorial entities are: unity, voluntariness, solidarity, equity, the common good, self-government, equality, complementariness, reciprocity, gender equity, subsidiarity, gradualness, coordination and institutional faithfulness, transparency, public participation and control, provision of economic resources and the pre-existence of the indigenous originary farmer nations and people, under the terms established in this Constitution.</p> <p>Art 273: The law will regulate the formation of the communities among municipalities, regions and indigenous originary farmer territories for the purpose of achieving their objectives.</p> <p>Art 278: (I) The Departmental Assembly will be composed of male and female departmental assembly members, elected by universal, direct, free, secret and mandatory vote; and by departmental assembly members elected by the indigenous originary farmer nations and people, in accordance with their own norms and procedures. (II) The Law will determine the general criteria for the election of departmental assembly members, taking into account population, territorial, cultural identity and linguistic representation when there are indigenous originary farmer minorities, and parity and alternation of gender. The Autonomic Statutes will define its application in accordance with the specific realities and conditions of its jurisdiction.</p> <p>Art 284: (II) The indigenous originary farmer nations and people in the municipalities, which do not constitute indigenous originary farmer autonomy, may elect their representatives to the Municipal Council directly following their own norms and procedures and in accordance with the Municipal Organic Charter.</p> <p>Art 289: The indigenous originary farmer autonomy consists in self-government as an exercise of free determination of the indigenous originary farmer nations and people, of which population share territory, culture, history, languages, and their own juridical, political, social and economic organization or institutions.</p> <p>Art 290: (I) The formation of the indigenous originary farmer autonomy is based on the ancestral territories, currently inhabited by those nations and people, expressed in consultation, in accordance with the Constitution and the law. (II) The self-governance of the indigenous originary farmer autonomies is exercised according to their norms, institutions, authorities and procedures, in accordance with their authority and competences, in harmony with the Constitution and the law.</p> <p>Art 291: (I) The indigenous originary farmer autonomies are indigenous originary farmer territories, and the municipalities, and regions that adopt that character in accordance to what is established in the Constitution and the law. (II) Two or more indigenous originary farmer peoples can form a single indigenous originary farmer autonomy.</p> <p>Art 292: Each indigenous originary farmer autonomy will draft its Statute according to its own norms and procedures, in conformity with the Constitution and the law.</p> <p>Art 293: (I) The indigenous autonomy based on consolidated indigenous territories and those in process, once consolidated, shall be constituted by the expressed will of the population through consultation in conformity with their own norms and procedures as the sole necessary requirement. (II) If the conformation of an indigenous originary farmer autonomy affects the limits of municipal districts, the indigenous originary farmer nations or peoples and the municipal government must agree on a new district demarcation. If it affects municipal limits, a process shall be conducted before the Plurinational Legislative Assembly for its approval, prior the compliance with the requirements and particular conditions set forth by law. (III) The law will establish the minimum population requirements and other differentiated for the constitution of an indigenous originary farmer autonomy. (IV) To constitute an indigenous originary farmer autonomy of which territories are found in one or more municipalities, the law will state the articulation, coordination and cooperation mechanisms for the exercise of its government.</p> <p>Art 294: (I) The decision to form an indigenous originary farmer autonomy will be adopted in accordance to the norms and procedures for consultation, pursuant to the requisites and conditions established in the Constitution and the law. (II) The decision to convert a municipality into an indigenous originary farmer autonomy will be adopted by referendum, in accordance to the requisites and conditions established by law.</p>	



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		<p>(III) In the municipalities where there are indigenous communities with their own organizational structures of articulation and that have geographic continuity, a new municipality can be formed, following the procedure for its approval before the Plurinational Legislative Assembly, upon prior compliance with the requisites and conditions set forth in the Constitution and the law.</p> <p>Art 295: (I) To form an indigenous originary farmer region that affects municipal limits there shall be a prior procedure conducted before the Plurinational Legislative Assembly fulfilling the particular requisites and conditions set forth in the Constitution and the law. (II) The addition of municipalities, municipal districts and/or indigenous originary farmer autonomies to form an indigenous originary farmer region, will be decided by referendum and/or in accordance with their norms and procedures for consultation as the case may be, and in accordance to the requisites and conditions established by the Constitution and the Law.</p> <p>Art 296: The government of the indigenous originary farmer autonomies is exercised through their own norms and forms of organization, with the denomination that corresponds to each town, nation or community, as established in their statutes and subject to the Constitution and the Law.</p> <p>Art 303: (I) The indigenous originary farmer autonomy, in addition to its competences shall assume those of the municipalities, in accordance with a process of institutional development and with their own cultural characteristics in conformity with the Constitution and the Autonomies and Decentralization Framework Law. (II) The indigenous originary farmer region, will assume the competences that may be transferred or delegated to it.</p> <p>Art 304: (I) The indigenous originary farmer autonomies can exercise the following exclusive competences: ... (2) Definition and management of their own forms of economic, social, political, organizational and cultural development, in accordance with their identity and the vision of each village. (3) Management and administration of renewable natural resources, in accord with the Constitution. (4) Elaboration of Plans of Territorial Zoning and use of soils, in coordination with the plans of the central level of the State, departmental and municipal. ... (7) Administration and preservation of protected areas in their jurisdiction, within the framework of the policy of the State. (8) Exercise of the indigenous originary farmer jurisdiction for the application of justice and the resolution of conflicts through their own norms and procedures in accordance with the Constitution and the law. (10) Tangible and intangible cultural patrimony. The safeguard, encouragement and promotion of its cultures, art, identity, archeological centers, religious and cultural places, and museums. (11) Tourism policies. ... (15) Planning and management of territorial occupation. (16) Housing, town planning and redistribution of population in accordance with the cultural practices in the area of its jurisdiction. ... (18) Maintenance and administration of its micro-irrigation systems. (19) Encouragement and development of productive activity. ... (21) Participate, develop and execute the mechanisms of prior, free and informed consultation related to the application of legislative, executive and administrative measures that affect them. (22) Preservation of the habitat and the landscape, in accordance with its principles, norms, and cultural, technological, space and historical practices. (23) Development and exercise of its democratic institutions in accordance to its own norms and procedures. (II) The indigenous originary farmer autonomies can exercise the following shared competences: ... (2) Participation and control in the use of grains. (3) The safeguard and registration of collective intellectual property related to knowledge of genetic resources, traditional medicine and germ plasma, in accordance with the law. (4) Control and regulation of foreign institutions and organizations that conduct activities in their jurisdiction, which are inherent to the development of their institutions, culture, environment and natural patrimony. (III) The indigenous originary farmer autonomies may exercise the following concurrent competences: ... (3) Conservation of forestry resources, biodiversity and the environment. (4) Irrigation systems, water resources, sources of water and energy, within the framework of State policy, within their jurisdiction. (5) Construction of micro-irrigation systems. ... (7) Promotion for the construction of productive infrastructures. (8) Promotion and encouragement of agriculture and stockbreeding. (9) Control and socio-environmental monitoring of the hydrocarbon and mining activities conducted in their jurisdiction.</p> <p>Art 307: The State will recognize, respect, protect and promote communitarian economic development. This form of communitarian economic organization includes productive and reproductive systems of public life, founded on the principles and visions of the indigenous originary farmer nations and people.</p>	

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		<p>Art 319: (I) The industrialization of natural resources will be a priority in the economic policies, within the framework of respect for and protection of the environment and of the rights of the indigenous originary farmer nations and people and their territories. The articulation of the exploitation of natural resources with the internal productive apparatus will be a priority in the economic policies of the State.</p> <p>Art 337: (II) The State shall promote and protect communitarian tourism with the objective of benefiting urban and rural communities, and the indigenous originary farmer nations and people where this activity is conducted.</p> <p>Art 340: (I) The revenue of the State is divided into national, departmental, municipal and indigenous originary farmer and will be invested independently by their Treasuries, in accordance to their respective budgets. (II) The law will classify the national, departmental, municipal and indigenous originary farmer income. (III) The departmental, municipal, indigenous originary farmer autonomies, judicial and university resources collected by dependent offices of the national level, will not be centralized in the National Treasury.</p> <p>Art 352: The exploitation of natural resources in a determined territory will be subjected to a process of consultation with the affected population, called by the State, which will be free, prior in time and informed. Citizen participation is guaranteed in the process of management of the environment, and the conservation of ecosystems will be promoted, in accordance with the Constitution and the law. In the indigenous originary farmer nations and people, the consultation will be conducted with respect given to their own norms and procedures.</p> <p>Art 353: The Bolivian people will have equitable access to the benefits which come from the use of all the natural resources. Priority participation will be assigned to the territories where these resources are found, and to the indigenous originary farmer nations and people.</p> <p>Art 355: (II) The profits obtained from the exploitation and sale of the natural resources will be distributed and reinvested to promote economic diversification in the different territorial levels of the State. The percentage distribution of profits will be approved by law.</p> <p>Art 374: (II) The State will recognize, respect and protect the uses and customs of the community, of its local authorities and the indigenous originary farmer nations and people over the right, management and administration of sustainable water.</p> <p>Art 375: (II) The State will regulate the management and sustainable administration of the water resources and the basins for irrigation, food security and basic services, respecting the uses and customs of the communities.</p> <p>Art 385: (II) Wherever indigenous originary farmer protected areas and territories overlap, shared management will be undertaken, subject to the norms and procedures of the indigenous originary farmer nations and people, respecting the objective of creation of these areas.</p> <p>Art 388: The indigenous originary farmer communities located within forest areas will have the exclusive right to their use and their management, in accordance with the law.</p> <p>Art 391: (III) The State in coordination with the indigenous originary farmer authorities and the inhabitants of the Amazonia, will create a special, decentralized organ, headquartered in the Amazonia, to promote its own activities within the region.</p> <p>Art 392: (I) The State will implement special policies in benefit of the indigenous originary farmer nations and people of the region in order to generate the necessary conditions for the reactivation, encouragement, industrialization, commercialization, protection and conservation of traditional extract products. (II) The historical cultural and economic value of the siringa and the castaño is recognized, symbols of the Bolivian Amazonia, of which cutting will be sanctioned, except in the cases of public interest as regulated by law.</p> <p>Art 394: (I) Individual agrarian property is classified as small, medium and corporate, in function to its surface area, the production, and the development criteria. Its maximum and minimum extensions, characteristics and forms of conversion will be regulated by law. Legally acquired rights by individual owners, whose piece of land is inside indigenous originary farmer territories, are guaranteed. ... (III) The State recognizes, protects and guarantees communitarian or collective property, which includes indigenous originary farmer territory, native, intercultural communities and rural communities. Collective property is</p>	

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		<p>declared indivisible, imprescribable, non-attachable, inalienable and irreversible, and will not be subjected to agrarian property taxes. Communities can be titleholders, recognizing the complementary character of collective and individual rights, respecting territorial unity with identity.</p> <p>Art 395: (I) Fiscal lands will be granted to indigenous originary farmer people, intercultural indigenous communities, afro-Bolivians and farmer communities which do not possess them or that are insufficient, in accordance with a State policy concerned with the ecological and geographic realities, as well as the population, social, cultural and economic necessities. The granting will be conducted according to the policies of sustainable rural development and the right of women to access, distribution and redistribution of land, without discrimination based on civil status or marital union. (II) Double grantings, purchase and sale, exchange and donation of granted lands are prohibited. (III) For being contrary to collective interest, the obtaining of income generated by the speculative use of the land is prohibited.</p> <p>Art 397: (I) Labor is the fundamental source for the acquisition and maintenance of agrarian property. Properties must be used to serve a social purpose or a social economic purpose in order to safeguard their right, depending on the nature of the property. (II) Social purpose will be understood as the sustainable use of the land by the indigenous originary farmer communities, as well as that conducted in small properties, and it constitutes the source of subsistence and wellbeing and sociocultural development of its titleholders. The norms of the communities are recognized in the fulfillment of the social purpose.</p> <p>Art 403: (I) The totality of the indigenous originary farmer territory is recognized, which includes the right to its land, to the use and exclusive utilization of the renewable natural resources under the conditions determined by law; to prior and informed consultation and to participation in the benefits of the exploitation of the non-renewable natural resources that are found in their territories; to the authority to apply their own norms, administered by their structures of representation, and to define their development in accordance to their own cultural criteria and principles of harmonious coexistence with nature. The indigenous originary farmer territories can be composed of communities. (II) The indigenous originary farmer territory includes areas of production, areas of use and conservation of natural resources and spaces for social, spiritual and cultural reproduction. The law will establish the procedure for the recognition of these rights.</p> <p>Art 405: The comprehensive sustainable rural development is a fundamental part of the economic policies of the State, which will prioritize its actions to encourage all communitarian economic undertakings and those of rural actors, placing emphasis on food security and sovereignty, by means of the following: ... (4) The significance and respect of the indigenous originary farmer communities in all dimensions of their life.</p> <p>Art 410: II. The Constitution is the supreme norm of Bolivian law and enjoys supremacy before any other normative provision. The constitutional legislation includes the international Treaties and Conventions in the matter of human rights and the norms of Communitarian Law, ratified by the country. The application of the legal norms will be governed by the following hierarchy, in accordance with the competences of the territorial entities: (1) The Political Constitution of the State (2) The international treaties (3) The national laws, autonomic statutes, organic charters and the other departmental, municipal and indigenous legislation. (4) Decrees, regulations and other resolutions issued by the corresponding executive organs.</p> <p>Seventh Transitory Provision: For purposes of application of paragraph I of article 293 of this Constitution, the indigenous territory will have as the basis of its demarcation the Communitarian Lands of Origin. Within the term of one year from the election of the Executive and Legislative Organ, the category of Communitarian Land of Origin will be subjected to administrative process for its conversion to Indigenous Originary Farmer Territory, within the framework established in this Constitution.</p>	

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Meso and South America	Brazil 1988	<p>Art 20: The following is property of the Union ... (XI) lands traditionally occupied by Indians.</p> <p>Art 231: Indians shall have their social organization, customs, languages, creeds, and traditions recognized, as well as their native rights to the lands they traditionally occupy, it being incumbent upon the Republic to demarcate them and protect and ensure respect for all their property. (1) Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those which are indispensable to preserve the environmental resources required for their well being and those necessary for their physical and cultural reproduction, according to their uses, customs, and traditions. (2) The lands traditionally occupied by Indians are intended for their permanent possession, and they shall be entitled to exclusive use of the riches of the soil, rivers, and lakes existing thereon. (3) Hydric resources, including energy potential, may only be exploited and mineral riches in Indians lands may only be prospected and mined with the authorization of Congress, after hearing the communities involved, which shall be assured of participation in the mining results in accordance with the law. (4) The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to the statute of limitations. (5) It is forbidden to remove Indian groups from their lands except, "ad referendum" of Congress, in the event of epidemic which represents a risk for their population or in the interest of Brazilian sovereignty, after resolution by Congress, provided that immediate return as soon as the risk ceases shall be ensured under all circumstances. (6) Acts aiming at occupation, domain and possession of the lands referred to in this article, or at exploitation of the natural riches of the soil, rivers, and lakes existing thereon, are null and void and of no legal effect, except in the case of relevant public interest of the Republic, according to a supplemental act; such nullity and voidness shall not create a right to indemnity or to sue the Republic, except as to improvements derived from occupation in good faith in accordance with the law. (7) The provisions of Article 174 (3) and (4) [<i>placer-mining activity in cooperatives</i>] shall not apply to Indian lands.</p> <p>Art 232: Indians, their communities, and organizations have standing to sue to defend their rights and interests, the Public Attorney's Office intervening in all the procedural acts.</p> <p><i>Temporary Constitutional Provisions Act:</i> Art 67: The Union shall conclude the demarcation of the Indian lands within five years of the promulgation of the Constitution.</p>	<p>Unofficial text:  <a href="http://www.servat.unibe.ch/icl/br00000_.html">http://www.servat.unibe.ch/icl/br00000_.html</a></p>
Meso and South America	Chile 1980	Nil	<p>Unofficial text:  <a href="http://confinder.richmond.edu/admin/docs/Chile.pdf">http://confinder.richmond.edu/admin/docs/Chile.pdf</a></p>
Meso and South America	Colombia 1991	<p>Art 63: Property in public use, natural parks, communal lands of ethnic groups, security zones, the archaeological resources of the nation, and other property determined by law are inalienable, imprescriptible, and unseizable.</p> <p>Art 171: The Senate of the Republic will be made up of 100 members elected in one national electoral district. There will be an additional two senators elected in a special national electoral district for indigenous (Indian) communities. Colombian citizens who happen to be or reside abroad may vote in elections for the Senate of the Republic. The special national electoral district for the election of Senators by the indigenous communities will proceed according to the electoral quotient system. The representatives of the indigenous communities who wish to present themselves as members of the Senate of the Republic will have occupied a traditional post of authority in their respective communities or will have been leaders of an indigenous organization, as recognized by means of a certificate from such organization and authenticated by the government Ministry.</p> <p>Art 246: The authorities of the indigenous (Indian) peoples may exercise their jurisdictional functions within their territorial jurisdiction in accordance with their own laws and procedures provided these are not contrary to the Constitution and the laws of the Republic. The law will establish the forms of coordination of this special jurisdiction with the national judicial system.</p> <p>Art 310: The department of San Andrés Archipelago, Providencia, and Santa Catalina will be regulated, in addition to the provision in the Constitution and the laws for the other departments, by special provisions which in administrative, immigration, fiscal, foreign trade, exchange, financial, and economic development matters will be established by the legislature. By means of a law approved by the majority of the members</p>	<p>Unofficial text:  <a href="http://confinder.richmond.edu/admin/docs/colombia_const2.pdf">http://confinder.richmond.edu/admin/docs/colombia_const2.pdf</a></p>

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		<p>of each chamber, it will be possible to limit the exercise of the rights of movement and residence, establish controls on the density of population, regulate the use of land, and submit to special conditions the transfer of immovable property in order to protect the cultural identity of the indigenous (Indian) communities and preserve the environment and natural resources of the archipelago. Through the creation of the municipalities that may occur, the departmental assembly will guarantee the institutional expression of the original communities assembly will of San Andrés. The municipality of Providencia will have a share of no less than 20 percent of the total value of said departmental revenues.</p> <p>Art 329: The configuration of the indigenous (Indian) territorial entities will be developed subject to the provisions of the Organic Law of Territorial Planning, and their determination will be effected by the national government with the participation of the representatives of the indigenous communities following, the plan of the Commission of Territorial Planning. The reservations constitute collective property and are inalienable. The law will define the relations and coordination of these entities with those of which they form a part. In the case of an indigenous (Indian) territory that includes the territory of two or more departments, its administration will be implemented by indigenous councils in coordination with the governors of the respective departments. In case that such territory should decide to constitute itself as a territorial entity, this will be done in compliance with the requirements established in the first clause of this article.</p> <p>Art 330: In accordance with the Constitution and the laws, the indigenous (Indian) territories will be governed by councils formed and regulated according to the customs of their communities and will exercise the following functions: (1) Supervise the application of the legal regulations concerning the uses of land and settlement of their territories; (2) Design the policies, plans, and programs of economic and social development within their territory, in accordance with the National Development Plan; (3) Promote public investments in their territories and supervise their appropriate implementation; (4) Collect and distribute their funds; (5) Supervise the conservation of natural resources; (6) Coordinate the programs and projects promoted by the different communities in their territory; (7) Cooperate with to maintain public order within their territory in accordance with the instructions and provisions of the national government; (8) Represent the territories before the national government and the other entities within which they are integrated; and (9) Other matters stipulated by the Constitution and the law.</p> <p>Provisional Art 55: Within the two years following the entry into effect of the present Constitution, Congress will issue, following a study by a special commission that the government will create for that purpose, a law which will recognize the right to collective property of the Black communities which occupy uncultivated lands in the rural zones adjoining the rivers of the Pacific Basin, in accordance with their traditional cultivation practices. This law will apply to the area stipulated therein. In the special commission referred to in the previous clause, representatives elected by the communities involved will participate in each case. The property thus recognized will only be transferable within the limits stipulated by the law. The same law will establish mechanisms to protect the cultural identity and the rights of these communities and to foster their economic and social development. (1) The provisions in the present article may be applied to other zones of the country that have similar conditions through the same procedure and following, a study and the favorable decision of the special commission prescribed here. (2) If at the conclusion of the deadline stipulated in this article the Congress has not issued the law stipulated above, the government will proceed to do so through a decree having the force of law.</p>	
Meso and South America	Costa Rica 1949	Art 129: Paragraph 5: A law may not be abrogated or repealed except by a subsequent law, and no disuse, custom, or opposite practice can be claimed against its enforcement.	Unofficial text: <a href="http://www.costaricalaw.com/legalnet/constitutional_law/constitenglish.html">http://www.costaricalaw.com/legalnet/constitutional_law/constitenglish.html</a>
Meso and South America	Ecuador 2008	<p>Preamble: ... CALLING UPON the wisdom of all the cultures that enrich us as a society.</p> <p>Art 2: The flag, coat of arms and national anthem, as provided for by law, are the symbols of the nation. Spanish is Ecuador's official language; Spanish, Kichwa and Shuar are official languages for intercultural ties. The other ancestral languages are in official use by indigenous peoples in the areas where they live and in accordance with the terms set forth by law. The State shall respect and encourage their preservation and use.</p> <p>Art 3: The State's prime duties are: ... (7) Protecting the country's natural and cultural assets.</p>	Unofficial text: <a href="http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html">http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html</a>

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		<p>Art 11: The exercise of rights shall be governed by the following principles: (1) Rights can be exercised, promoted and enforced individually or collectively before competent authorities; these authorities shall guarantee their enforcement. (2) All persons are equal and shall enjoy the same rights, duties and opportunities. No one shall be discriminated against for reasons of ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, legal record, socio-economic condition, migratory status, sexual orientation, health status, HIV carrier, disability, physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which might be aimed at or result in the diminishment or annulment of recognition, enjoyment or exercise of rights. All forms of discrimination are punishable by law. The State shall adopt affirmative action measures that promote real equality for the benefit of the rights-bearers who are in a situation of inequality. ... (7) Recognition of the rights and guarantees set forth in the Constitution and in international human rights instruments shall not exclude the other rights stemming from the dignity of persons, communities, peoples and nations that might be needed for their full development.</p> <p>Art 13: Persons and community groups have the right to safe and permanent access to healthy, sufficient and nutritional food, preferably produced locally and in keeping with their various identities and cultural traditions.</p> <p>Art 21: Persons have the right to build and uphold their own cultural identity, to decide their belonging to one or various cultural communities, and to express these choices; the right to aesthetic freedom; the right to learn about the historical past of their cultures and to gain access to their cultural heritage; to disseminate their own cultural expressions and to have access to diverse cultural expressions. Culture cannot be used as an excuse when infringing rights recognized in the Constitution.</p> <p>Art 23: Persons have the right to gain access to and participate in public spaces as a sphere for deliberation, cultural exchange, social cohesiveness and the promotion of equality in diversity. The right to disseminate in public spaces one's own cultural manifestations shall be exercised without any constraint other than those provided for by the law, subject to the principles of the Constitution.</p> <p>Art 25: Persons have the right to enjoy the benefits and applications of scientific progress and ancestral wisdom.</p> <p>Art 28: Education shall be for general welfare of the public and shall not be at the service of individual and corporate interests. Universal access, permanence, mobility and graduation without any discrimination shall be guaranteed, as well compulsory attendance of initial schooling, basic education and secondary education or their equivalent. It is the right of every person and community to interact among cultures and to participate in a society that learns. The State shall promote intercultural dialogue in all of its many dimensions. Learning shall take place with schooling systems and non-school modalities.</p> <p>Art 29: The State shall guarantee the freedom to teach, academic freedom in higher education, and the right of persons to learn in their own language and cultural environment. Mothers and fathers or their representatives shall be at liberty to choose for their daughters and sons an education that is in line with their principles, beliefs, and pedagogical options.</p> <p>Art 32: Health is a right guaranteed by the State and whose fulfillment is linked to the exercise of other rights, among which the right to water, food, education, sports, work, social security, healthy environments and others that support the good way of living. The State shall guarantee this right by means of economic, social, cultural, educational, and environmental policies; and the permanent, timely and non-exclusive access to programs, actions and services promoting and providing integral healthcare, sexual health, and reproductive health. The provision of healthcare services shall be governed by the principles of equity, universality, solidarity, interculturalism, quality, efficiency, effectiveness, prevention, and bioethics, with a gender and generational approach.</p> <p>Art 56: Indigenous communities, peoples and nations, the Afro-Ecuadorian people, the backcountry people (montubios) of the inland coastal region, and communes are part of the single and indivisible Ecuadorian State.</p> <p>Art 57: Indigenous communes, communities, peoples and nations are recognized and guaranteed, in conformity with the Constitution and human rights agreements, conventions, declarations and other</p>	

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		<p>international instruments, the following collective rights: (1) To freely uphold, develop and strengthen their identity, feeling of belonging, ancestral traditions and forms of social organization. (2) To not be the target of racism or any form of discrimination based on their origin or ethnic or cultural identity. (3) To recognition, reparation and compensation for community groups affected by racism, xenophobia and other related forms of intolerance and discrimination. (4) To keep ownership, without subject to a statute of limitations, of their community lands, which shall be unalienable, immune from seizure and indivisible. These lands shall be exempt from paying fees or taxes. (5) To keep ownership of ancestral lands and territories and to obtain free awarding of these lands. (6) To participate in the use, usufruct, administration and conservation of natural renewable resources located on their lands. (7) To free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located on their lands and which could have an environmental or cultural impact on them; to participate in the profits earned from these projects and to receive compensation for social, cultural and environmental damages caused to them. The consultation that must be conducted by the competent authorities shall be mandatory and in due time. If consent of the consulted community is not obtained, steps provided for by the Constitution and the law shall be taken. (8) To keep and promote their practices of managing biodiversity and their natural environment. The State shall establish and implement programs with the participation of the community to ensure the conservation and sustainable use of biodiversity. (9) To keep and develop their own forms of peaceful coexistence and social organization and creating and exercising authority, in their legally recognized territories and ancestrally owned community lands. (10) To create, develop, apply and practice their own legal system or common law, which cannot infringe constitutional rights, especially those of women, children and adolescents. (11) To not be displaced from their ancestral lands. (12) To uphold, protect and develop collective knowledge; their science, technologies and ancestral wisdom; the genetic resources that contain biological diversity and agricultural biodiversity; their medicine and traditional medical practices, with the inclusion of the right to restore, promote, and protect ritual and holy places, as well as plants, animals, minerals and ecosystems in their territories; and knowledge about the resources and properties of fauna and flora. All forms of appropriation of their knowledge, innovations, and practices are forbidden. (13) To uphold, restore, protect, develop and preserve their cultural and historical heritage as an indivisible part of Ecuador's heritage. The State shall provide resources for this purpose. (14) To develop, strengthen, and upgrade the intercultural bilingual education system, on the basis of criteria of quality, from early stimulation to higher levels of education, in conformity with cultural diversity, for the care and preservation of identities, in keeping with their own teaching and learning methodologies. A teaching career marked by dignity shall also be guaranteed. Administration of this system shall be collective and participatory, with rotation in time and space, based on community monitoring and accountability. (15) To build and uphold organizations that represent them, in a context of pluralism and cultural, political, and organizational diversity. The State shall recognize and promote all forms of expression and organization. (16) To participate by means of their representatives in the official organizations established by law to draw up public policies concerning them, as well as design and decide their priorities in the plans and projects of the State. (17) To be consulted before the adoption of a legislative measure that might affect any of their collective rights. (18) To uphold and develop contacts, ties and cooperation with other peoples, especially those that are divided by international borders. (19) To promote the use of garments, symbols and emblems that identify them. (20) To restrict military activities in their territories, in accordance with the law. (21) That the dignity and diversity of their cultures, traditions, histories, and ambitions be reflected in public education and in the media; the creation of their own media in their languages and access to the others without any discrimination. The territories of the peoples living in voluntary isolation are an irreducible and intangible ancestral possession and all forms of extractive activities shall be forbidden there. The State shall adopt measures to guarantee their lives, enforce respect for self-determination and the will to remain in isolation and to ensure observance of their rights. The violation of these rights shall constitute a crime of ethnocide, which shall be classified as such by law. The State shall guarantee the enforcement of these collective rights without any discrimination in conditions of equality and equity between men and women.</p>	

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		<p>Art 58: To build up their identity, culture, traditions and rights, the collective rights of the Afro-Ecuadorian people are recognized, as set forth in the Constitution, the law, and human rights agreements, conventions, declarations and other international instruments.</p> <p>Art 59: The collective rights of the coastal back-country people (montubios) are recognized to guarantee their process of integral, sustainable and durable human development, the policies and strategies for their progress and their forms of societal management, on the basis of knowledge about their reality and respect for their culture, identity, and own vision, in accordance with the law.</p> <p>Art 60: Ancestral, indigenous, Afro-Ecuadorian and coastal back-country (montubios) peoples can establish territorial districts for the preservation of their culture. The law shall regulate their establishment. Communities (comunas) that have collective land ownership are recognized as an ancestral form of territorial organization.</p> <p>Art 66: The following rights of persons are recognized and guaranteed: ... (4) The right to formal equality, material equality and nondiscrimination. ... (8) The right to practice, keep, change, profess in public or private one's religion or beliefs and to disseminate them individually or collectively, with the constraints imposed by respect for the rights of others. The State shall protect voluntary religious practice, as well the expression of those who profess no religion whatsoever, and shall favor an environment of plurality and tolerance. ... (24) The right to participate in the cultural life of the community. ... (28) The right to personal and collective identity, which includes having a first name and last name, which is duly registered and freely chosen, and to preserve, develop and build up the tangible and intangible characteristics of said identity, such as nationality, family origins, and spiritual, cultural, religious, linguistic, political and social manifestations.</p> <p>Art 76: In all processes where rights and obligations of any kind are set forth, the right to due process of law shall be ensured, including the following basic guarantees: ... (7) The right of persons to defense shall include the following guarantees: ... (i) No one can be judged more than once for the same case and offense. For this purpose, the cases ruled by the indigenous legal system must also be taken into account.</p> <p>Art 171: The authorities of the indigenous communities, peoples, and nations shall perform jurisdictional duties, on the basis of their ancestral traditions and their own system of law, within their own territories, with a guarantee for the participation of, and decision-making by, women. The authorities shall apply their own standards and procedures for the settlement of internal disputes, as long as they are not contrary to the Constitution and human rights enshrined in international instruments. The State shall guarantee that the decisions of indigenous jurisdiction are observed by public institutions and authorities. These decisions shall be subject to monitoring of their constitutionality. The law shall establish the mechanisms for coordination and cooperation between indigenous jurisdiction and regular jurisdiction.</p> <p>Art 189: Justices of the peace shall settle matters in a framework of equity and shall have the exclusive and mandatory competence to hear those individual, community, and district conflicts and infringements that are brought to their jurisdiction, in conformity with the law. In no case can they order the arrest and imprisonment of a person nor can they prevail over indigenous justice.</p> <p>Art 242: The State is territorially organized into regions, provinces, cantons and rural parishes. Special systems may be established for reasons of environmental conservation, or ethnic-cultural or population factors. Autonomous metropolitan districts, the province of Galápagos, and indigenous and pluricultural territorial districts shall constitute special systems.</p> <p>Art 257: Within the framework of political-administrative organization, indigenous or Afro-Ecuadorian territorial districts may be formed. These shall have jurisdiction over the respective autonomous territorial government and shall be governed by the principles of interculturalism and plurinationalism, and in accordance with collective rights. Parishes, cantons and provinces comprised in their majority of indigenous, Afro-Ecuadorian, coastal back-country (montubio) or ancestral communities, peoples or nations may take up this special administration system following a referendum passed by at least two thirds of the valid votes. Two or more districts administered by indigenous or pluricultural territorial governments may integrate and form a new district. The law shall set forth the rules for the structure, operation and competences of such districts.</p>	



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		<p>Art 322: Intellectual property is recognized pursuant to the conditions provided for by law. Any form of appropriation of collective knowledge, in the fields of science, technology and ancestral wisdom, is forbidden. The appropriation of genetic resources contained in biological diversity and agricultural biodiversity is likewise forbidden.</p> <p>Art 343: The national education system shall be aimed at developing the population's individual and collective capabilities and potential, enabling learning and the generation and use of knowledge, techniques, wisdom, arts and culture. The system shall have as its core focus the learning subject and shall function flexibly and dynamically, with an inclusive, efficient and effective approach. The national education system shall incorporate an intercultural vision in line with the country's geographical, cultural, and linguistic diversity and respect for the rights of the communities, peoples and nations.</p> <p>Art 347: The following shall be the responsibility of the State: ... (10) To ensure that the teaching of at least one ancestral language be progressively included in the curriculum.</p> <p>Art 358: The national health system shall be aimed at ensuring the development, protection, and recovery of capacities and potential for a healthy and integral life, both individual and collective, and shall recognize social and cultural diversity. The system shall be governed by the general principles of the national system of social inclusion and equity and by those of bioethics, adequacy and interculturalism, with a gender and generation approach.</p> <p>Art 360: The system shall guarantee, through the institutions that comprise it, the promotion of family and community health, prevention and integral care, on the basis of primary healthcare; it shall articulate various levels of care; and it shall promote complementariness with ancestral and alternative medicines.</p> <p>Art 362: Healthcare as a public service shall be provided through state, private, autonomous, and community institutions, as well as those that practice alternative and complementary ancestral medicine. Healthcare services shall be safe, of a high quality, and humane and they shall guarantee informed consent, access to information, and confidentiality of the information of patients.</p> <p>Art 373: Rural worker social security, which is part of the Ecuadorian Social Security Institute, shall consist of a special system for mandatory universal insurance to protect the rural population and persons earning their livelihood from traditional fishing; it shall be funded with the mutually supportive contribution of insured persons and employers of the national social security system, with the differentiated contribution by heads of protected households and the treasury allocations that guarantee their consolidation and development. Insurance shall provide health benefits and protection against contingencies of invalidity, disability, old age and death. Public and private insurance, without exception, shall contribute to funding the rural worker social security through the Ecuadorian Social Security Institute.</p> <p>Art 377: The national system for culture is aimed at building national identity; protecting and promoting the diversity of cultural manifestations; encouraging the freedom of artistic creation and the production, dissemination, distribution and enjoyment of cultural goods and services; and the production, dissemination, distribution and enjoyment of cultural goods and services; and safeguarding social memory and cultural heritage. The full exercise of cultural rights is guaranteed.</p> <p>Art 378: The national system for culture shall be comprised of all the institutions of the cultural sector that receive public funding and of the groups and persons who are voluntarily linked to the system. The cultural entities that receive public funding shall be subject to control and accountability. The State shall exercise leadership of the system through the competent body, with respect to the freedom of creation and expression, interculturalism and diversity; it shall be responsible for the management and promotion of culture, as well as the drafting and implementation of national policy in this field.</p> <p>Article 379. The following are part of the tangible and intangible cultural heritage that is relevant for the memory and identity of persons and groups and the target of safeguard by the State, among others: (1) Languages, forms of expression, oral tradition and diverse cultural manifestations and creations, including those of a ritual, festive or productive nature. (2) Urban buildings, spaces, and sectors, monuments, natural sites, trails, gardens or landscapes that constitute milestones for the identity of peoples or that have historical, artistic, archeological, ethnographic or paleontological value. (3) Documents, objects, collections, archives, libraries, and museums that have historical, artistic, archeological, ethnographic or paleontological</p>	

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		<p>value. (4) Artistic, scientific and technological creations. The cultural heritage assets of the State shall be unalienable, immune from seizure, and not subject to a statute of limitations. The State shall have priority right over the acquisition of cultural heritage assets and shall guarantee their protection. Any damage shall be punishable by law.</p> <p>Art 385: The national system of science, technology, innovation and ancestral wisdom, in the framework of respect for the environment, nature, life, cultures and sovereignty, shall have as its end purpose the following: (1) To generate, adapt, and disseminate scientific and technological knowledge. (2) To restore, strengthen and upgrade ancestral wisdom. (3) To develop technologies and innovations that promote national production, raise efficiency and productivity, improve the quality of life and contribution to the achievement of the good way of living.</p> <p>Art 387: The following shall be responsibilities of the State: ... 2. To promote the generation and production of knowledge, to foster scientific and technological research, and to upgrade ancestral wisdom to thus contribute to the achievement of the good way of living (sumak kawsay).</p> <p>Art 388: The State shall allocate the resources needed for scientific research, technological development, innovation, scientific training, restoration and development of ancestral wisdom, and the dissemination of knowledge. A percentage of these resources shall be earmarked for funding projects by means of competitive funds. Organizations that receive public funding shall be subject to accountability and the respective state control.</p> <p>Art 405: The national system of protected areas shall guarantee the conservation of biodiversity and the maintenance of ecological functions. The system shall be comprised of state, decentralized autonomous, community and private subsystems, and it shall be directed and regulated by the State. The State shall allocate the financial resources needed to ensure the system's financial sustainability and shall foster the participation of the communities, peoples, and nations who have their ancestral dwelling places in the protected areas in their administration and management.</p> <p>Art 423: Integration, especially with Latin American and Caribbean countries, shall be a strategic objective of the State. In all integration bodies and processes, the Ecuadorian State shall pledge: ... (4) To protect and promote cultural diversity, the exercise of interculturalism, the preservation of the cultural heritage and common memory of Latin America and the Caribbean, as well as the establishment of communication networks and a common market for cultural industries.</p> <p>Transitory Provisions, Six: The national councils for children and adolescents, persons with disabilities, women, indigenous peoples and nations, Afro-Ecuadorians and coastal back-country people (montubios) shall establish their own national councils for equality, for which purposes they shall adjust their structure and duties in line with the Constitution.</p>	
Meso and South America	El Salvador 1983	<p>Art 1: Paragraph 3: In consequence, it is the obligation of the State to secure for the inhabitants of the Republic, the enjoyment of liberty, health, culture, economic well-being and social justice.</p> <p>Art 32: Paragraph 1: The family is the fundamental basis of society and shall have the protection of the State, which shall dictate the necessary legislation and create the appropriate organizations and services for its integration, well-being and social, cultural, and economic development.</p> <p>Art 53: The right to an education and to culture is inherent to the human person; in consequence, the preservation, promotion, and dissemination of culture is an obligation and primary end of the State.</p> <p>Art 62: Paragraph 2: The native languages that are spoken in the national territory form part of the cultural patrimony and shall be the object of preservation, dissemination and respect.</p> <p>Art 63: The artistic, historical, and archeological wealth of the country form part of the Salvadoran cultural treasure, which shall be under the safeguard of the State and subject to special laws for its conservation.</p>	Official text (?): <a href="http://www.constitutionnet.org/files/El%20Salvador%20Constitution.pdf">http://www.constitutionnet.org/files/El%20Salvador%20Constitution.pdf</a>
Meso and South America	Guatemala 1985	<p>Art 58: The right of persons and communities to their cultural identity in keeping with their values, language, and customs is recognize</p> <p>Art 60: Paleontological, archeological, historical, and artistic assets and values form the cultural heritage of the Nation and are under the protection of the State. Their transfer, export, or alteration, except in cases determined by the law, are prohibited.</p> <p>Art 61: The archaeological sites, collections of monuments, and the Cultural Center of Guatemala, will</p>	Unofficial text: <a href="http://www.constitutionnet.org/files/Guatemala%20Constitution.pdf">http://www.constitutionnet.org/files/Guatemala%20Constitution.pdf</a>

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		<p>receive the special attention of the State with the purpose of preserving its characteristics and defending its historic value and cultural assets. The Tikal National Park, the Archeological Park of Quirigua, and the city of Antigua Guatemala will be subject to a special conservation regime because they have been declared to be the legacy of mankind [<i>Patrimonio Mundial</i>] as well as those that receive similar recognition.</p> <p>Art 62: The national artistic expression, popular art, folklore, and native handicrafts and crafts must be the object of special protection by the State with the purpose of preserving their authenticity. The State will propitiate the opening of national and international markets for the free commercialization of the work of artists and craftsmen, promoting their production and adequate technification [<i>tecnificación</i>].</p> <p>Art 65: The activity of the State regarding the preservation and promotion of culture and its manifestations will be under the administration of a specific organ with its own budget.</p> <p>Art 66: Guatemala is made up of various ethnic groups among which are native groups of Mayan descent. The State recognizes, respects, and promotes their form of life, customs, traditions, forms of social organization, the wearing of Indian dress by men and women, their languages, and dialects.</p> <p>Art 67: The lands of the cooperatives, native communities, or any other forms of communal possession or collective of agrarian ownership, as well as the family heritage and popular housing will enjoy the special protection of the State, preferential credit and technical assistance, which may guarantee their ownership and development in order to insure an improved quality of life to all inhabitants.</p> <p>The indigenous communities and others which may own land that historically belongs to them and which they have traditionally administered in special form will maintain that system.</p> <p>Art 68: Through special programs and adequate legislation, the State will provide State lands to the indigenous communities that may need them for their development.</p> <p>Art 76: The administration of the educational system will have to be decentralized and regionalized. In the schools established in regions with a predominantly indigenous population, education will have to be provided preferentially in bilingual form.</p>	
Meso and South America	Guyana 1980	S 142: (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding paragraph [ <i>compulsory taking of property</i> ] – ... (b) to the extent that the law in question makes provision for the taking of possession or acquisition of – (i) property of the Amerindians of Guyana for the purpose of its care, protection and management or any right, title or interest held by any person in or over any lands situated in an Amerindian District, Area or Village established under the Amerindian Act for the purpose of effecting the termination or transfer thereof for the benefit of an Amerindian community	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5400&amp;skip=0&amp;coi=GUY&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5400&amp;skip=0&amp;coi=GUY&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Meso and South America	Honduras 1982	<p>Art 1: Honduras is a rule of law, sovereign, formed as a republic free, democratic and independent to assure its inhabitants the enjoyment of justice, freedom, culture and the economic and social welfare.</p> <p>Art 172: Paragraph 1: Any wealth anthropological, archaeological, historical and artistic of Honduras is part of the cultural heritage of the Nation. Paragraph 2: The Law will establish the rules that will serve as a basis for its conservation, catering, maintenance and refund, in his case. Paragraph 3: It is the duty of all the hondurans to ensure its conservation and prevent its subtraction.</p> <p>Art 173: The State preserve and stimulate the native cultures, as well as the genuine expressions of national folklore, the popular art and crafts.</p> <p>Art 346: Is the duty of the State enact measures to protect the rights and interests of indigenous communities in the country, especially of the land and forests where they settled.</p>	Unofficial text: <a href="http://www.honduras.com/honduras-constitution-english.html">http://www.honduras.com/honduras-constitution-english.html</a>
Meso and South America	Mexico 1917	Art 27: (VII) The centers of population which, by law or in fact, possess a communal status shall have legal capacity to enjoy common possession of the lands, forests, and waters belonging to them or which have been or may be restored to them. All questions, regardless of their origin, concerning the boundaries of communal lands, which are now pending or that may arise hereafter between two or more centers of population, are matters of federal jurisdiction. The Federal Executive shall take cognizance of such controversies and propose a solution to the interested parties. If the latter agree thereto, the proposal of the Executive shall take full effect as a final decision and shall be irrevocable; should they not be in conformity, the party or parties may appeal to the Supreme Court of Justice of the Nation, without prejudice to immediate enforcement of the presidential proposal. The law shall specify the brief procedure to which the	Unofficial text: <a href="http://www.oas.org/juridico/MLA/en/mex/en_mex-int-text-const.pdf">http://www.oas.org/juridico/MLA/en/mex/en_mex-int-text-const.pdf</a>

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		<p>settling of such controversies shall conform; (VIII) The following are declared null and void: (a) All transfers of the lands, waters, and forests of villages, <i>rancherías</i>, groups, or communities made by local officials (<i>jefes políticos</i>), state governors, or other local authorities in violation of the provisions of the Law of June 25, 1856, and other related laws and rulings; (b) All concessions, deals or sales of lands, waters, and forests made by the Secretariat of Development, the Secretariat of Finance, or any other federal authority from December 1, 1876 to date, which encroach upon or illegally occupy communal lands (ejidos), lands allotted in common, or lands of any other kind belonging to villages, rancherías, groups or communities, and centers of population. (c) All survey or demarcation-of-boundary proceedings, transfers, alienations, or auction sales effected during the period of time referred to in the preceding sub-clause, by companies, judges, or other federal or state authorities entailing encroachments on or illegal occupation of the lands, waters, or forests of communal holdings (ejidos), lands held in common, or other holdings belonging to centers of population. The sole exception to the aforesaid nullification shall be the lands to which title has been granted in allotments made in conformity with the Law of June 25, 1856, held by persons in their own name for more than ten years and having an area of not more than fifty hectares. (X) Centers of population which lack communal lands (ejidos) or which are unable to have them restored to them due to lack of titles, impossibility of identification, or because they had been legally transferred, shall be granted sufficient lands and waters to constitute them, in accordance with the needs of the population; but in no case shall they fail to be granted the area needed, and for this purpose the land needed shall be expropriated, at the expense of the Federal Government, to be taken from lands adjoining the villages in question. The area or individual unit of the grant shall hereafter be not less than ten hectares of moist or irrigated land, or in default of such land its equivalent in other types of land in accordance with the third paragraph of section XV of this article [<i>small agricultural or livestock properties</i>].</p> <p>Art 107: All controversies mentioned in Article 103 shall be subject to the legal forms and procedure prescribed by law, on the following bases: ... II. In trials in <i>amparo</i> which contest acts that resulted or could result in depriving <i>ejidos</i> or population groups, or members of an <i>ejido</i> or communal holders having a de facto or de jure communal status, from ownership or possession and enjoyment of their lands, waters, pastures, and woodlands, defects in the complaint must be corrected as provided in regulations; and there shall be no abandonment, discontinuance due to inactivity, or lapse of the legal action, if the rights of <i>ejidos</i> or communal population groups are affected.</p>	
Meso and South America	Nicaragua 2007	<p>Art 89: The Atlantic Coast communities are an indivisible part of the Nicaraguan people and, as such, enjoy the same rights and have the same obligations. The Atlantic Coast communities have the right to preserve and develop their cultural identity in the national context, adopt their own forms of social organization and administer their local issues in conformity with their traditions. The State recognizes the forms of communal land property of the Atlantic Coast communities. Equally, it recognizes the enjoyment, use and benefit of the waters and forests of their communal lands.</p> <p>Art 90: The Atlantic Coast communities have the right to the free expression and preservation of their languages, art and culture. The development of their culture and values enriches the national culture. The State shall create special programmes for the exercise of these rights.</p> <p>Art 91: The State has the obligation to adopt laws destined to promote actions that assure that no Nicaraguan is the object of discrimination on the basis of his language, culture and origin.</p> <p>Art 180: The Atlantic Coast communities have the right to live and develop themselves under the forms of social organization that correspond to their historic and cultural traditions. The State guarantees to these communities the enjoyment of their natural resources, the effectiveness of their forms of communal property and the free election of their authorities and representatives.</p> <p>Art 181: The State shall organize, by means of a law, the autonomous regime for the indigenous communities and the ethnic communities of the Atlantic Coast, which must contain, among other norms: the characteristics of their organs of government, their relation with the Executive and Legislative branches of government and with the municipalities, and the exercise of their rights. Such a law, for its adoption and amendment, shall require the majority required for amendment of constitutional laws. Concessions and contracts for rational exploitation of natural resources that the State grants in the Atlantic Coast</p>	<p>Unofficial translation by Patricia Moore, IUCN.  Unofficial text in Spanish:  <a href="http://www.asamblea.gob.ni/opciones/constituciones/democraticas/Constitucion.doc">http://www.asamblea.gob.ni/opciones/constituciones/democraticas/Constitucion.doc</a></p>

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		autonomous regions, must have the approval of the respective Autonomous Regional Council. The members of the Atlantic Coast autonomous regional councils may lose their status for causes and by procedures established by law. [Amended by Law No. 192.]	
Meso and South America	Panama 1972	Nil	Unofficial text: <a href="http://pdba.georgetown.edu/Constitutions/Panama/panama1994.html">http://pdba.georgetown.edu/Constitutions/Panama/panama1994.html</a>
Meso and South America	Paraguay 1992	<p>Art 62: This Constitution recognizes the existence of Indian peoples, defined as ethnic groups whose culture existed before the formation and constitution of the State of Paraguay.</p> <p>Art 63: The right of Indian peoples to preserve and to develop their ethnic identity in their respective habitat is hereby recognized and guaranteed. They also have the right to freely apply their systems of political, socioeconomic, cultural, and religious organization, and to voluntarily observe customary practices in their domestic coexistence as long as they do not violate the fundamental rights established by this Constitution. Indian customary rights will be taken into account when deciding conflicts of jurisdiction.</p> <p>Art 64: (1) Indian peoples have the right, as communities, to a shared ownership of a piece of land, which will be sufficient both in terms of size and quality for them to preserve and to develop their own lifestyles. The State will provide them with the respective land, free of charge. This land, which will be exempt from attachments, cannot be divided, transferred, or affected by the statute of limitations, nor can it be used as collateral for contractual obligations or to be leased. It will also be exempt from taxes. (2) The removal or transfer of Indian groups from their habitat, without their express consent, is hereby prohibited.</p> <p>Art 65: The right of Indian peoples to participate in the political, socioeconomic, and cultural life of the country in accordance with their customary practices, the Constitution, and the national laws, is hereby guaranteed.</p> <p>Art 66: The State will respect the cultural heritage of Indian peoples, especially regarding their formal education. At their request, the State will also defend them against demographic decline, the degradation of their habitat, environmental contamination, economic exploitation, and cultural alienation.</p>	Unofficial text: <a href="http://www.servat.unibe.ch/icl/pa00000_.html">http://www.servat.unibe.ch/icl/pa00000_.html</a>
Meso and South America	Peru 1993	<p>Art 2: Every person has the right: ... (19) to ethnic and cultural identity. The State acknowledges and protects the ethnic and cultural diversity of the Nation; Every Peruvian has the right to use his own language before any authority by means of an interpreter. Foreigners have the same right when summoned by any authority</p> <p>Art 89: The rural and native communities have legal existence and are artificial persons. They are autonomous in their organization, community work, and usage and free disposal of their lands, as well as in the economic and administrative aspects within the framework as provided by law. The ownership of their lands is imprescriptible, except in the case of abandonment described in the preceding article. The State respects the cultural identity of the rural and native communities.</p> <p>Art 139: Principles and rights of the jurisdictional function are the following: (8) the principle of not failing to administer justice, despite of legal gap or deficiency. In such case, the general principles of law and customary law must be applied.</p> <p>Art 149: Authorities of peasant and native communities, in conjunction with the peasant patrols, shall exercise jurisdictional functions at territorial level in accordance with customary law, provided they do not violate the fundamental rights of the individual. The law provides for the way of coordination of such jurisdiction with justice-of-the-peace court and other instances of the Judiciary.</p>	Official text: <a href="http://www.congreso.gob.pe/_ingles/CONSTITUTION_29_08_08.pdf">http://www.congreso.gob.pe/_ingles/CONSTITUTION_29_08_08.pdf</a>
Meso and South America	Suriname 1987	Nil	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b572c&amp;amp;skip=0&amp;amp;coi=SUR&amp;amp;querysi=constitution&amp;amp;searchin=title&amp;amp;display=10&amp;amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b572c&amp;amp;skip=0&amp;amp;coi=SUR&amp;amp;querysi=constitution&amp;amp;searchin=title&amp;amp;display=10&amp;amp;sort=date</a>
Meso and South America	Uruguay 1967	Nil	Unofficial text: <a href="http://pdba.georgetown.edu/Constitutions/Uruguay/uruguay04.html">http://pdba.georgetown.edu/Constitutions/Uruguay/uruguay04.html</a>
Meso and	Venezuela 1999	Art 119: The State recognizes the existence of native peoples and communities, their social, political and	Unofficial text: <a href="http://www.unhcr.org/cgi-">http://www.unhcr.org/cgi-</a>

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South America		<p>economic organization, their cultures, practices and customs, languages and religions, as well as their habitat and original rights to the lands they ancestrally and traditionally occupy, and which are necessary to develop and guarantee their way of life. It shall be the responsibility of the National Executive, with the participation of the native peoples, to demarcate and guarantee the right to collective ownership of their lands, which shall be inalienable, not subject to the law of limitations or distraint, and nontransferable, in accordance with this Constitution and the law...</p> <p>Art 120: Exploitation by the State of the natural resources in native habitats shall be carried out without harming the cultural, social and economic integrity of such habitats, and likewise subject to prior information and consultation with the native communities concerned. Profits from such exploitation by the native peoples are subject to the Constitution and the law.</p> <p>Art 121: Native peoples have the right to maintain and develop their ethnical and cultural entity, world view, values, spirituality and holy places and places of cult. The State shall promote the appreciation and dissemination of the cultural manifestations of the native peoples, who have the right to their own education, and an education system of an intercultural and bilingual nature, taking into account their special social and cultural characteristics, values and traditions.</p> <p>Art 122: Native peoples have the right to a full health system that takes into consideration their practices and cultures. The State shall recognize their traditional medicine and supplementary forms of therapy, subject to principles of bioethics.</p> <p>Art 123: Native peoples have the right to maintain and promote their own economic practices based on reciprocity, solidarity and exchange; their traditional productive activities and their participation in the national economy, and to define their priorities. Native peoples have the right to professional training services and to participate in the preparation, implementation and management of specific training programs and technical and financial assistance services to strengthen their economic activities within the framework of sustainable local development. The State shall guarantee to workers belonging to native peoples the enjoyment of the rights granted under labor legislation.</p> <p>Art 124: Collective intellectual property rights in the knowledge, technologies and innovations of native peoples are guaranteed and protected. Any activity relating to genetic resources and the knowledge associated with the same, shall pursue collective benefits. The registry of patents on this ancestral knowledge and these resources is prohibited.</p> <p>Art 156: Is of the competence of the National Public Power: ... (32) Legislation in the fields of constitutional guarantees, rights and duties; civil, mercantile, criminal, penological, procedural and private international law; election law; expropriation in the public interest or in the interest of society; public credit; intellectual, artistic and industrial property; cultural and archaeological heritage; agriculture; immigration and population; native people and the territories they occupy; labor, Welfare and Social Security; animal and vegetable hygiene; notarial and public record offices; banks and insurance; lotteries, racetracks and betting in general; organization and functioning of the organs of National Public Power and other organs and institutions at the national level; and all matters of national competence in general.</p> <p>Art 181: Municipal common lands are inalienable and not subject to the law of limitations. Title to them can be conveyed only subject to compliance with the formalities provided for under municipal ordinances and under the circumstances provided for thereunder, in accordance with this Constitution and such laws as may be promulgated to develop the principles container herein. Ownerless land located within the urban area of towns in a municipality is municipal common land, without prejudice to legitimate and validly constituted rights of third parties. Vacant land located within the urban area also becomes common land. However, this does not include land which is part of native communities. The mechanism for converting other public land into common land shall be established by law.</p> <p>Art 260: The legitimate authorities of the native peoples shall have the power to apply within their territorial competence levels of administration of justice based on their ancestral traditions and affecting their members only, in accordance to their own rules and proceedings, provided the same are not contrary to this Constitution, law and public order. The manner in which this special competence shall be coordinated with the national judicial system shall be determined by law.</p>	<p>bin/texis/vtx/refworld/rwmain?page=country&amp;am p;docid=4c45ad8b2&amp;amp;skip=0&amp;amp;coi=VEN &amp;amp;querysi=constitution&amp;amp;searchin=title&amp; amp;display=10&amp;amp;sort=date</p>

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North America and the Caribbean	Antigua and Barbuda 1981	S 127: (1) In this Constitution, unless the context otherwise requires – ... "law" means any law in force in Antigua and Barbuda or any part thereof, including any instrument having the force of law and any unwritten rule of law and "lawful" and "lawfully" shall be construed accordingly.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5bc0&amp;skip=0&amp;coi=ATG&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5bc0&amp;skip=0&amp;coi=ATG&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
North America and the Caribbean	Bahamas 1973	Art 137: (1) In this Constitution, unless it is otherwise provided or required by the context – ... "law" includes any instrument having the force of law and any unwritten rule of law, and "lawful" and "lawfully" shall be construed accordingly.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5744&amp;skip=0&amp;coi=BHS&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5744&amp;skip=0&amp;coi=BHS&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
North America and the Caribbean	Barbados 1966	S 117: (1) In this Constitution – ... "law" includes any instrument having the force of law and any unwritten rule of law	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5b68&amp;skip=0&amp;coi=BRB&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5b68&amp;skip=0&amp;coi=BRB&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
North America and the Caribbean	Canada 1982	S 22: Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French. S 25: The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including – (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired. S 35: (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada. (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired. (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5b30&amp;skip=0&amp;coi=CAN&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5b30&amp;skip=0&amp;coi=CAN&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
North America and the Caribbean	Cuba 1992	Nil	Unofficial text: <a href="http://www.cubanet.org/ref/dis/const_92_e.htm">http://www.cubanet.org/ref/dis/const_92_e.htm</a>
North America and the Caribbean	Dominica 1978	Nil	Official text: <a href="http://www.dominica.gov.dm/laws/chapters/chap1-01-sch1.pdf">http://www.dominica.gov.dm/laws/chapters/chap1-01-sch1.pdf</a>
North America and the Caribbean	Dominican Republic 2010	Art 10: The security of, and the economic, social and tourist development in the frontier area, the integration of roads, communication and production, as well as the dissemination of the national and cultural values of the Dominican people, are of supreme and permanent national interest. Therefore: (1) Public authorities shall prepare, implement and give priority to public investment policies and programs related to social and public works to promote these objectives; (2) The rules for buying and transferring real estate in the frontier area shall be subject to specific legal requirements favoring ownership by Dominicans and promoting the national interest. Art 39: All persons are born free and equal before the law and shall receive the same protection and treatment from institutions, authorities and other persons, and shall enjoy the same rights, freedoms and opportunities, without discrimination due to gender, skin color, age, disability, national origin, family ties, language, religion, political or philosophical opinions, or social or personal conditions. Therefore: (1) The Dominican Republic condemns any privilege or state of affairs that may undermine equality among Dominicans, as there must be no difference among them other than those resulting from their talents or	Unofficial translation of official text: Available for purchase through Amazon.com: <a href="http://www.amazon.com/Constitution-Dominican-Republic-ebook/dp/B004SBWI3O/ref=sr_1_1?s=digital-text&amp;ie=UTF8&amp;qid=1312596811&amp;sr=1-1">http://www.amazon.com/Constitution-Dominican-Republic-ebook/dp/B004SBWI3O/ref=sr_1_1?s=digital-text&amp;ie=UTF8&amp;qid=1312596811&amp;sr=1-1</a>

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		<p>moral integrity; (2) No entity in the Dominican Republic shall grant titles of nobility or hereditary titles...</p> <p>Art 45: The State guarantees the freedom of conscience and religion, subject to the need for public order and respect for public morals.</p> <p>Art 64: All persons have the right to participate and act freely and without censorship in the cultural life of the Nation, and to full access and enjoyment of cultural goods and services, scientific advances and artistic and literary works. The State shall protect the interests, both economic and non-economic, of authors and inventors in their works. Therefore: (1) The State shall establish policies to promote and encourage, at the national and international levels, the different scientific, artistic and popular expressions of Dominican culture; and shall foster and support the efforts of individuals, institutions and communities to develop or finance cultural programs and activities; (2) The State shall guarantee freedom of speech and cultural creativity, as well as access to culture under equal conditions; and shall promote cultural diversity, cooperation and the cultural exchange among nations; (3) The State shall recognize the value of cultural identity, individually and collectively, and its importance for comprehensive and sustainable development, economic growth, innovation and human welfare, by supporting and disseminating scientific research and cultural works. The State shall protect the dignity and integrity of all persons engaged in cultural activities; (4) The State shall safeguard the tangible and intangible cultural property of the Nation, ensuring its protection, improvement, conservation, restoration and enhancement. The cultural property of the Nation, whether originally state-owned or acquired by the State, shall not be transferred, seized or acquired by adverse possession. Cultural property in private hands and cultural property reposed underwater shall similarly be protected against illegal exportation and plundering. The law shall regulate the requirements for their acquisition.</p> <p>Art 66: The State recognizes collective and diffuse rights and interests, which are exercised under the conditions and restrictions established by law. Therefore, the State protects: (1) The preservation of the ecological balance, including the fauna and flora; (2) The preservation of the environment; (3) The preservation of the cultural, historic, urban, artistic, architectural and archaeological heritage.</p> <p>Art 93: The National Congress makes laws and exercises control in the name of the people. Therefore, it has the following duties: (1) General legislative duties: ... (c) To decide all matters related to the conservation of monuments and the historical, cultural and artistic heritage of the Nation. (2) Powers of supervision and control... (b) To ensure the conservation and productiveness of the assets and resources of the Nation for the benefit of the community...</p> <p>Art 193: The Dominican Republic is a unitary State and the purpose of territorial organization is to promote the comprehensive and balanced development of the Nation and its inhabitants, compatible with their needs, and with the preservation of natural resources, national identity and cultural values. The territory shall be organized according to the principle of unity, identity, and political, administrative, social and economic rationality.</p>	
North America and the Caribbean	Grenada 1973	Nil	Unofficial text: <a href="http://pdba.georgetown.edu/Constitutions/Grenada/gren73eng.html">http://pdba.georgetown.edu/Constitutions/Grenada/gren73eng.html</a>
North America and the Caribbean	Haiti 1987	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b542c&amp;skip=0&amp;coi=HTI&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b542c&amp;skip=0&amp;coi=HTI&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
North America and the Caribbean	Jamaica 1999	Nil	<a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b4ed28&amp;skip=0&amp;coi=JAM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b4ed28&amp;skip=0&amp;coi=JAM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>



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North America and the Caribbean	Saint Kitts and Nevis 1983	Nil	Unofficial text: <a href="http://www.constitution.org/cons/stkitts-.htm">http://www.constitution.org/cons/stkitts-.htm</a>
North America and the Caribbean	Saint Lucia 1979	Nil	Official text: <a href="http://www.stlucia.gov.lc/saint_lucia/saintluciaco nstitution/the_saint_lucia_constitution.htm">http://www.stlucia.gov.lc/saint_lucia/saintluciaco nstitution/the_saint_lucia_constitution.htm</a>
North America and the Caribbean	Saint Vincent and the Grenadines 1979	Nil	Unofficial text: <a href="http://pdba.georgetown.edu/Constitutions/v/incent/stvincent79.html">http://pdba.georgetown.edu/Constitutions/v/incent/stvincent79.html</a>
North America and the Caribbean	Trinidad and Tobago 1976	Nil	Unofficial text: <a href="http://www.ttparliament.org/documents/1048.pdf">http://www.ttparliament.org/documents/1048.pdf</a>
North America and the Caribbean	United States of America 1787	Nil	Official text: <a href="http://www.archives.gov/exhibits/charters/constitution_transcript.html">http://www.archives.gov/exhibits/charters/constitution_transcript.html</a>
Oceania	Australia 1900	Nil	Official text: <a href="http://www.comlaw.gov.au/Details/C2004C00469">http://www.comlaw.gov.au/Details/C2004C00469</a>
Oceania	Cook Islands 1965	Art 48: (3) Notwithstanding anything in this Part or in Part IVA, and in recognition of the customs and traditions of the people of those islands, the Land Division shall not exercise any jurisdiction or power in relation to land or chiefly titles in any of the islands of Mangaia, Mitiaro and Pukapuka, and such other islands as may be prescribed by Act, provided that no such Act shall be introduced to Parliament except with the consent of the Aronga Mana of the island to which it relates.	Official text: <a href="http://www.parliament.gov.ck/Constitution.pdf">http://www.parliament.gov.ck/Constitution.pdf</a>
Oceania	Federated States of Micronesia 1995	Art V, S 1: Nothing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles at any level of government as may be prescribed by this Constitution or by statute. Art V, S 2: The traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged as violative of Article IV [ <i>declaration of rights</i> ], protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action. Art IX, S 2: The following powers are expressly delegated to Congress: ... (p) to define national crimes and prescribe penalties, having due regard for local custom and tradition Art XI, S 11: Court decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. In rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=3ae6b51f18&amp;skip=0&amp;coi=FSM&amp;querysi=constitution&amp;searchin=title&amp;mp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=3ae6b51f18&amp;skip=0&amp;coi=FSM&amp;querysi=constitution&amp;searchin=title&amp;mp;display=10&amp;sort=date</a>
Oceania	Fiji 1997 (note: the 1997 Constitution was abrogated in 2009 but has not yet been replaced)	S 6: The people of the Fiji Islands recognise that, within the framework of this Constitution and the other laws of the State, the conduct of government is based on the following principles: ... (b) the ownership of Fijian land according to Fijian custom, the ownership of freehold land, and the rights of landlords and tenants under leases of agricultural land are preserved; (c) all persons have the right to practise their religion freely and to retain their language, culture and traditions; (d) the rights of the Fijian and Rotuman people include their right to governance through their separate administrative systems; S 38: (7) A law is not inconsistent with subsections (1), (2) or (3) [ <i>equality before the law and prohibition on discrimination</i> ] on the ground that it: ... (d) permits a person who has a discretion to institute or discontinue criminal proceedings to take account in the exercise of that discretion of traditional procedures in the State for the settlement of disputes... but only to the extent that the law is reasonable and justifiable in a free and democratic society. (8) A law, or an administrative action taken under a law, may limit a right or freedom set out in this section for the purpose of: (a) providing for the application of the customs of Fijians or Rotumans	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=3ae6b5390&amp;skip=0&amp;coi=FJI&amp;querysi=constitution&amp;searchin=title&amp;mp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;mp;docid=3ae6b5390&amp;skip=0&amp;coi=FJI&amp;querysi=constitution&amp;searchin=title&amp;mp;display=10&amp;sort=date</a>

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		<p>or of the Banaban community: (i) to the holding, use or transmission of, or to the distribution of the produce of, land or fishing rights; or (ii) to the entitlement of any person to any chiefly title or rank; (b) imposing a restriction on the alienation of land or fishing rights held in accordance with Fijian or Rotuman custom or in accordance with Banaban custom; or (c) permitting the temporary alienation of that land or those rights without the consent of the owners.</p> <p>S 43: (1) The specification in this Chapter of rights and freedoms is not to be construed as denying or limiting other rights and freedoms recognised or conferred by common law, customary law or legislation to the extent that they are not inconsistent with this Chapter.</p> <p>S 52: (2) In determining the boundaries of the constituencies for the election of members to the communal seats to be filled in accordance with subparagraph 51(1)(a)(i), the Constituency Boundaries Commission: ... (c) subject to paragraphs (a) and (b), must give due consideration, in relation to each proposed constituency, to: ... (ii) the boundaries of existing recognised traditional areas.</p> <p>S 185: (1) A Bill that alters any of the following Acts, namely: (a) Fijian Affairs Act; (b) Fijian Development Fund Act; (c) Native Lands Act; (d) Native Land Trust Act; (e) Rotuma Act; (f) Rotuman Lands Act; (g) Banaban Lands Act; or (h) Banaban Settlement Act; including a Bill prepared in consequence of the enactment of this Constitution: (i) must be expressed as a Bill for an Act to alter the Act concerned; (j) must not be presented for the President's assent unless it has been read 3 times in each House and motions for the second and third readings are carried in each House; and (k) is deemed not to have been passed by the Senate unless at its third reading in that House it is supported by the votes of at least 9 of the 14 members of the Senate appointed under paragraph 64(1)(a). (3) The President must not assent to a Bill referred to in this section unless it is accompanied by a certificate of the Secretary-General to Parliament certifying that, in relation to the particular House, the approval required by this section has been given.</p> <p>S 186: (1) The Parliament must make provision for the application of customary laws and for dispute resolution in accordance with traditional Fijian processes. (2) In doing so, the Parliament must have regard to the customs, traditions, usages, values and aspirations of the Fijian and Rotuman people. (3) The Parliament must make provision granting to the owners of land or of registered customary fishing rights an equitable share of royalties or other moneys paid to the State in respect of the grant by the State of rights to extract minerals from the land or the seabed. (4) A law fixing amounts under subsection (3) must require that account be taken of: (a) any benefits that the owners are likely to receive as a result of the mineral exploitation; (b) the risk of environmental damage; (c) any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing or compensating for any environmental damage; (d) the cost to the State of administering exploitation rights; and (e) the appropriate contribution to the general revenue of the State to be made by the person granted exploitation rights.</p>	
Oceania	Kiribati 1979	<p>Preamble: In implementing this Constitution, we declare that – ... (4) we shall continue to cherish and uphold the customs and traditions of Kiribati.</p> <p>S 119: (3) Where any Banaban possesses any right over or interest in land in Banaba, no such right or interest shall be compulsorily acquired other than a leasehold interest and in accordance with section 8 (1) of this Constitution, and then only where the following conditions are satisfied, that is to say – (a) the Banaba Island Council has been consulted; and (b) every reasonable effort has been made to acquire the interest by agreement with the person who possesses the right over or interest in the land.</p>	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b4eab&amp;amp;skip=0&amp;amp;coi=KIR&amp;amp;querysi=constitution&amp;amp;searchin=title&amp;amp;display=10&amp;amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;amp;docid=3ae6b4eab&amp;amp;skip=0&amp;amp;coi=KIR&amp;amp;querysi=constitution&amp;amp;searchin=title&amp;amp;display=10&amp;amp;sort=date</a>
Oceania	Marshall Islands 1979	<p>Art III, S 1: (1) There shall be a Council of Iroij of the Marshall Islands. (2) The Council of Iroij shall consist of 5 eligible persons from districts of the Ralik Chain and 7 eligible persons from districts of the Ratak Chain of the Marshall Islands selected as follows: from the Ralik Chain excluding Ujelang — 4 Irojilaplap from Ujelang —1 Irojilaplap from Mili —1 Irojilaplap from Arno —1 Irojilaplap from Mejit —1 Irojilaplap from Majuro —1 Irojilaplap from Airok (Maloelap) —1 Irojilaplap from Aur, Maloelap (excluding Airok) Wotje, Utrik and Ailuk —1 Irojilaplap from Likiep —1 Owner. (3) If, in any district, a person or group of persons becomes recognized, pursuant to the customary law or to any traditional practice, as having rights and obligations analogous to those of Irojilaplap, that person, or a member of that group nominated by the group, shall be deemed to be eligible to be a member of the Council of Iroij as though he were an Irojilaplap. (4) Where in any district, the number of</p>	Official text: <a href="http://www.rminitijela.org/constitution/rmi_constitution.pdf">http://www.rminitijela.org/constitution/rmi_constitution.pdf</a>

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		<p>persons eligible to be members of the Council of Iroij is greater than the number of seats to be filled: (a) the term of office of the member or members from that district shall be one calendar year; (b) before the expiration of any calendar year, the eligible persons in that district shall endeavor to reach agreement among themselves as to which of them shall be the member or members from that district during the next calendar year; (c) if, by the date of the first meeting of the Council in any calendar year, there has been no such agreement, the Nitijela shall as soon as practicable proceed, by resolution, to appoint one or more of the eligible persons to be the member or members from that district; (d) the selection of any member, whether by the eligible persons themselves or by the Nitijela, shall take account of the need for a reasonable rotation among the eligible persons in that district, but any member may serve for two or more terms, consecutively or otherwise. (5) If, in the case of any district, there is for any reason no person eligible to be a member of the Council of Iroij in accordance with paragraphs (2) or (3) of this Section, the Council of Iroij shall as soon as practicable proceed, by resolution, to appoint as a member of the Council a person who, in the opinion of the Council, having regard to the customary law and any traditional practice, is qualified by reason of his family ties to a person who, but for that reason, would have been eligible to be a member of the Council from that district.</p> <p>Art III, S 2: The Council of Iroij shall have the following functions: (a) the Council may consider any matter of concern to the Marshall Islands, and it may express its opinion thereon to the Cabinet; (b) the Council may request, in accordance with Section 3 of this Article, the reconsideration of any Bill affecting the customary law, or any traditional practice, or land tenure, or any related matter, which has been adopted on third reading by the Nitijela; (c) the Council shall have such other functions as may be conferred on it by or pursuant to Act.</p> <p>Art III, S 3: (1) Subject to paragraph (8) of this Section, the Clerk of the Nitijela shall transmit to the Clerk of the Council of Iroij, for reference to the Council, a copy of every Bill adopted on third reading by the Nitijela. (2) The Council of Iroij may, within 7 days after the date of such transmittal, adopt a resolution expressing its opinion that a Bill so transmitted to the Council affects the customary law or a traditional practice, or land tenure, or a related matter, and requesting the Nitijela to reconsider the Bill, or it may sooner, by writing signed by the Chairman of the Council, record its decision not to adopt any such resolution. (3) The Clerk of the Council of Iroij shall forthwith transmit to the Clerk of the Nitijela, for reference to the Speaker, a copy of any such resolution or decision, together with any observations on the Bill which the Council may wish to make. (4) The Speaker may, pursuant to Section 21 of Article IV, certify that a Bill required to be transmitted to the Council of Iroij has been passed by the Nitijela, if he is satisfied that the Council has, in relation to that Bill, adopted no resolution pursuant to paragraph (2) of this Section within the period of 7 days referred to in that paragraph, or has sooner recorded its decision not to adopt any such resolution. (5) If, in relation to any Bill the Council of Iroij has adopted a resolution pursuant to paragraph (2) of this Section, the Nitijela may proceed to reconsider the Bill, together with any observations of the Council thereon. (6) In the course of any such reconsideration, the Speaker may, in consultation with the Chairman of the Council of Iroij arrange for the holding of a joint conference between members of the Council and members of the Nitijela, for the purpose of endeavoring to reach agreement about the content of the Bill. (7) After reconsidering the Bill, the Nitijela may decide not to proceed with the Bill, or may amend the Bill in any manner it thinks fit, or may, by resolution reaffirm its support for the Bill without amendment. (8) The provisions of paragraph (1) of this Section shall not apply to an Appropriation Bill or a Supplementary Appropriation Bill or to any Bill which the Nitijela has amended or reaffirmed, pursuant to paragraph (7) of this Section. (9) The Speaker may, pursuant to Section 21 of Article IV, certify that a Bill to which paragraph (5) of this Section relates has been passed by the Nitijela, if he is satisfied that it has been amended or reaffirmed pursuant to paragraph (7) of this Section.</p> <p>Art VI, S 4: (1) The Traditional Rights Court shall be a court of record; shall consist of panels of 3 or more judges selected so as to include a fair representation of all classes of land rights, including, where applicable, the Iroijlaplap, Iroijedrik, Alap and Dri Jerbal; and shall sit at such times and places and be chosen on such a geographical basis, as to ensure fair and knowledgeable exercise of the jurisdiction conferred by this Section. (2) The size, membership and procedures of the Traditional Rights Court shall be</p>	

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		<p>consistent with paragraph (1) of this Section, and shall be determined by the High Court unless and until the Nitijela makes provision for those matters by Act. (3) The jurisdiction of the Traditional Rights Court shall be limited to the determination of questions relating to titles or to land rights or to other legal interests depending wholly or partly on customary law and traditional practice in the Marshall Islands. (4) The jurisdiction of the Traditional Rights Court may be invoked as of right upon application by a party to a pending judicial proceeding; but only if the court in which such proceeding is pending certifies that a substantial question has arisen within the jurisdiction of the Traditional Rights Court. (5) When a question has been certified to the Traditional Rights Court for its determination under paragraph (4), its resolution of the question shall be given substantial weight in the certifying court's disposition of the legal controversy before it; but shall not be deemed binding unless the certifying court concludes that justice so requires.</p> <p>Art X, S 1: (1) Nothing in Article II shall be construed to invalidate the customary law or any traditional practice concerning land tenure or any related matter in any part of the Marshall Islands, including, where applicable, the rights and obligations of the Iroijlaplap, Iroijedrik, Alap and Dri Jerbal. (2) Without prejudice to the continued application of the customary law pursuant to Section(1)of Article XIII, and subject to the customary law or to any traditional practice in any part of the Marshall Islands, it shall not be lawful or competent for any person having any right in any land in the Marshall Islands under the customary law or any traditional practice to make any alienation or disposition of that land, whether by way of sale, mortgage, lease, license or otherwise, without the approval of the Iroijlaplap, Iroijedrik where necessary, Alap and the Senior Dri Jerbal of such land, who shall be deemed to represent all persons having an interest in that land.</p> <p>Art X, S 2: (1) In the exercise of its legislative functions, it shall be the responsibility of the Nitijela, whenever and to the extent considered appropriate, to declare, by Act, the customary law in the Marshall Islands or in any part thereof. The customary law so declared may include any provisions which, in the opinion of the Nitijela, are necessary or desirable to supplement the established rules of customary law or to take account of any traditional practice. (2) This Section shall not be construed to authorize the making of any law that would defeat an otherwise valid claim under Article II. (3) The Nitijela shall not proceed further than the first reading of any Bill or amendment to a Bill which, in the opinion of the Speaker, makes provision for any declaration pursuant to paragraph (1) of this Section unless a joint committee of the Council of Iroij and the Nitijela has been afforded a reasonable opportunity to make a report on the matters dealt with in that Bill or amendment, and any such report has been published.</p> <p>Art XIV, S 1: In this Constitution, unless the context otherwise requires: ... 'Customary law' means any custom having the force of law in the Marshall Islands; and includes any Act declaring the customary law; ... 'Land rights' mean any right in any land in the Marshall Islands under the customary law or any traditional practice</p>	
Oceania	Nauru 1968	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5504&amp;skip=0&amp;coi=NRU&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5504&amp;skip=0&amp;coi=NRU&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Oceania	New Zealand – note: constitution comprised of multiple documents (including, but not limited to the Treaty of Waitangi 1840, Judicature Act 1908, Legislative	<p><u>Constitution Act 1986</u> Nil <u>Treaty of Waitangi 1840</u> Art 2: Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.</p>	Official text: Constitution Act 1986 <a href="http://www.legislation.govt.nz/act/public/1986/014/latest/whole.html#d1m94204">http://www.legislation.govt.nz/act/public/1986/014/latest/whole.html#d1m94204</a> Treaty of Waitangi 1840 <a href="http://www.legislation.govt.nz/act/public/1975/014/latest/DLM435834.html">http://www.legislation.govt.nz/act/public/1975/014/latest/DLM435834.html</a>

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	Council Abolition Act 1950, Letters Patent constituting the office of Governor-General of New Zealand, Constitution Act 1986, Imperial Laws Application Act 1988, New Zealand Bill of Rights 1990, Electoral Act 1993, Supreme Court Act 2003)		
Oceania	Niue 1974	Art 33: (1) The Niue Assembly shall not proceed upon any Bill or upon an amendment to any Bill, after its introduction, if in the opinion of the Speaker, that Bill or that amendment makes provision concerning – (a) The customary title to Niuean land; or (b) The alienation of Niuean land, or (c) The purchase, taking, or other acquisition of Niuean land for any public purpose. ... (5) In this Article – "Alienation", in relation to Niuean land, means the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust, or other disposition, whether absolute or limited, and whether legal or equitable; and includes a contract to make any such alienation, and also includes the surrender or variation of a lease, licence, easement, or profit and the variation of the terms of any other alienation as hereinbefore defined; "Customary title" means title in accordance with the customs and usages of Niue; "Niuean land" means land in Niue vested in the Crown but held by Niueans according to the customs and usages of Niue; and includes any land granted by the Crown in fee simple before the 1st day of April 1916 and any customary land declared to be Niuean freehold land or native freehold land by an order of any Court before the 1st day of November 1969.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b53f4&amp;skip=0&amp;coi=NIU&amp;querysi=constitution&amp;searchin=title&amp;mp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b53f4&amp;skip=0&amp;coi=NIU&amp;querysi=constitution&amp;searchin=title&amp;mp;display=10&amp;sort=date</a>
Oceania	Palau 1979	Art V, S 1: The government shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution, nor shall it prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government. Art V, S 2: Statutes and traditional law shall be equally authoritative. In case of conflict between a statute and a traditional law, the statute shall prevail only to the extent it is not in conflict with the underlying principles of the traditional law. Art VIII, S 6: A Council of Chiefs composed of a traditional chief from each of the states shall advise the President on matters concerning traditional laws, customs and their relationship to this Constitution and the laws of Palau. No person shall be a member of the Council of Chiefs unless he has been appointed and accepted as a chief in a traditional manner, and is recognized as such by the traditional council of chiefs of his state. No chief shall serve in the Council of Chiefs while serving as a member of the Olbiil Era Kelulau or the cabinet. Art XIII, S 10: The national government shall, within five (5) years of the effective date of this Constitution, provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration.	Official text (?): <a href="http://www.palauembassy.com/Documents/ConstitutionE.pdf">http://www.palauembassy.com/Documents/ConstitutionE.pdf</a>

Region	Constitution	Scope of Provision	Source and Access
Oceania	Papua New Guinea 1975	<p>Preamble: We, the people of Papua New Guinea... acknowledge the worthy customs and traditional wisdoms of our people— which have come down to us from generation to generation</p> <p>S 53: (5) Nothing in the preceding provisions of this section [<i>unjust deprivation of property</i>] prevents – ... (d) any taking of possession or acquisition that is in accordance with custom; or (e) any taking of possession or acquisition of ownerless or abandoned property (other than customary land).</p> <p>S 54: Nothing in Section 37 (<i>protection of the law</i>) or 53 (<i>protection from unjust deprivation of property</i>) invalidates a law that is reasonably justifiable in a democratic society that has a proper regard for human rights and that provides – (a) for the recognition of the claimed title of Papua New Guinea to land where – (i) there is a genuine dispute as to whether the land was acquired validly or at all from the customary owners before Independence Day; and (ii) if the land were acquired compulsorily the acquisition would comply with Section 53(1) (<i>protection from unjust deprivation of property</i>); or (b) for the settlement by extra-judicial means of disputes as to the ownership of customary land that appear not to be capable of being reasonably settled in practice by judicial means</p> <p>S 78: (2) In Subsection (1) [<i>effect of adoption</i>], a reference to adoption includes a reference to an adoption by custom.</p> <p>S 172: (2) Courts established under Subsection (1) may include courts intended to deal with matters primarily by reference to custom or in accordance with customary procedures, or both.</p> <p>Sch 1.2: (1) In this Constitution or an Organic Law – "custom" means the customs and usages of indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial.</p> <p>Sch 2.1: (1) Subject to Subsections (2) and (3), custom is adopted, and shall be applied and enforced, as part of the underlying law. (2) Subsection (1) does not apply in respect of any custom that is, and to the extent that it is, inconsistent with a Constitutional Law or a statute, or repugnant to the general principles of humanity. (3) An Act of the Parliament may – (a) provide for the proof and pleading of custom for any purpose; and (b) regulate the manner in which, or the purposes for which, custom may be recognized, applied or enforced; and (c) provide for the resolution of conflicts of custom.</p> <p>Sch 2.2: (1) Subject to this Part, the principles and rules that formed, immediately before Independence Day, the principles and rules of common law and equity in England are adopted, and shall be applied and enforced, as part of the underlying law, except if, and to the extent that – ... (c) in their application to any particular matter they are inconsistent with custom as adopted by Part 1.</p> <p>Sch 2.10: (1) Where it appears to a court other than the Supreme Court or the National Court that - ... (b) a decision of law that is otherwise binding on it by virtue of the preceding provisions of this Part and that is otherwise applicable to the matter before it – ... (ii) is inconsistent with any custom that is part of the underlying law and is applicable in relation to the matter ... then unless the question is trivial, vexatious or irrelevant the court may, and shall if so requested by a party to the matter, state a case to the court that made the decision or decisions or the equivalent court, or if there be no such court to the National Court, and take whatever other action (including the adjournment of proceedings) is appropriate.</p>	<p>Official text:  <a href="http://www.nefc.gov.pg/Constitution%20of%20PNG%20FINAL.pdf">http://www.nefc.gov.pg/Constitution%20of%20PNG%20FINAL.pdf</a></p>
Oceania	Samoa 1960	<p>Preamble: Whereas the Leaders of Samoa have declared that Samoa should be an Independent State based on Christian principles and Samoan custom and tradition.</p> <p>Art 20: The Head of State shall not hold any other office of profit or any other position carrying the right to remuneration for the rendering of services, or engage in any occupation for reward outside the functions of his office; but nothing in this clause shall prevent him from holding the pule over any customary land, from holding any freehold land or other private property, or from disposing of the produce of any customary or freehold land.</p> <p>Art 100: A Matai title shall be held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.</p> <p>Art 101: (1) All land in Samoa is customary land, freehold land or public land. (2) Customary land means land held from Samoa in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.</p>	<p>Unofficial text (?): <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5908&amp;skip=0&amp;coi=WSM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5908&amp;skip=0&amp;coi=WSM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a></p>

Region	Constitution	Scope of Provision	Source and Access
		<p>Art 102: It shall not be lawful or competent for any person to make any alienation or disposition of customary land or of any interest in customary land, whether by way of sale, mortgage or otherwise howsoever, nor shall customary land or any interest therein be capable of being taken in execution or be assets for the payment of the debts of any person on his decease or insolvency. Provided that an Act of Parliament may authorise – (a) The granting of a lease or licence of any customary land or of any interest therein; (b) The taking of any customary land or any interest therein for public purposes.</p> <p>Art 103: There shall be a Land and Titles Court with such composition and with such jurisdiction in relation to Matai titles and customary land as may be provided by Act.</p> <p>Art 111: "Law" means any law for the time being in force in Samoa; and includes this Constitution, any Act of Parliament and any proclamation, regulation, order, by-law or other act of authority made thereunder, the English common law and equity for the time being in so far as they are not excluded by any other law in force in Samoa, and any custom or usage which has acquired the force of law in Samoa or any part thereof under the provisions of any Act or under a judgement of a Court of competent jurisdiction.</p>	
Oceania	Solomon Islands 1978	<p>Preamble: We the people of Solomon Islands, proud of the wisdom and the worthy customs of our ancestors, mindful of our common and diverse heritage and conscious of our common destiny, do now, under the guiding hand of God, establish the sovereign democratic State of Solomon Islands.</p> <p>S 15: (5) Subsection (1) of this section [<i>prohibiting discriminatory laws</i>] shall not apply to any law so far as that law makes provision – ... (d) for the application of customary law.</p> <p>S 75: (1) Parliament shall make provision for the application of laws, including customary laws. (2) In making provision under this section, Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands.</p> <p>S 76: Until Parliament makes other provision under the preceding section, the provisions of Schedule 3 to this Constitution shall have effect for the purpose of determining the operation in Solomon Islands – (c) of customary law..</p> <p>S 112: Parliament shall provide, in relation to any compulsory acquisition of customary land or any right or interest in it, that (a) before acquisition, there shall be negotiations with the owner, (b) the owner shall have a right of access to independent legal advice, and (c) so far as practicable, the interest acquired shall be limited to a fixed-term interest</p> <p>S 114: (2) Parliament shall by law (b) make provision for the government of Honiara city and the provinces and consider the role of traditional chiefs in the provinces</p> <p>S 144: 'customary law' means the rules of customary law prevailing in an area of Solomon Islands</p> <p>Sch 3, S 2: (1) the rules of common law and equity shall have effect in so far as (c) they are inconsistent with customary law</p> <p>Sch 3, S 3: (1) subject to this paragraph, customary law shall have effect as part of the law; (2) subpara (1) shall not apply in respect of any customary law that is inconsistent with the Constitution or an Act; (3) an Act may - (a) provide for the proof and pleading of customary law; (b) regulate the manner or purposes for which customary law may be recognised; (c) provide for the resolution of conflicts of customary law</p>	Official text: <a href="http://www.parliament.gov.sb/files/business&amp;procedure/constitution.htm">http://www.parliament.gov.sb/files/business&amp;procedure/constitution.htm</a>
Oceania	Tonga 1875	Nil	Official text, unofficial consolidation: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b559c&amp;skip=0&amp;coi=TON&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b559c&amp;skip=0&amp;coi=TON&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
Oceania	Tuvalu 1986	<p>Preamble: And whereas the people of Tuvalu desire to constitute themselves as an independent State based on Christian principles, the Rule of Law, and Tuvaluan custom and tradition.</p> <p>S 15: (5) In determining whether a law or act is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity, a court may have regard to – (a) traditional standards, values and practices, as well as previous laws and judicial decisions, of Tuvalu.</p> <p>S 27: (3) Subsection (2) [<i>prohibiting treatment in a discriminatory manner</i>] does not apply to a law so far as it makes provision – ... (d) in respect of – (i) adoption; or (ii) marriage; or (iii) divorce; or (iv) burial; or (v) any</p>	Official text: <a href="http://www.paclii.org/tv/legis/consol_act/cot277/">http://www.paclii.org/tv/legis/consol_act/cot277/</a>

Region	Constitution	Scope of Provision	Source and Access
		<p>other such matter, in accordance with the personal law, beliefs or customs of any person or group;... (7) Subject to section 12(2) (<i>which relates to harsh, oppressive or otherwise unlawful acts</i>) and 15 (<i>definition of "reasonably justifiable in a democratic society"</i>) and to any other law, no act that – (a) is in accordance with Tuvaluan custom; and (b) is reasonable in the circumstances, shall be considered to be inconsistent with subsection (2).</p> <p>S 83: (2) Subject to subsection (1), a Bill for an Act for the purposes of section 82 (<i>composition of Parliament</i>) shall, so far as practicable, be based on the principle that each member of Parliament should represent approximately the same number of electors, but in the circumstances of Tuvalu account must also be taken of – ... (c) the boundaries of existing administrative and traditional areas.</p>	
Oceania	Vanuatu 1980	<p>Art 5: (2) Protection of the law shall include the following – (f) no-one shall be convicted in respect of an act or omission which did not constitute an offence known to written or custom law at the time it was committed</p> <p>Art 29: (1) The National Council of Chiefs shall be composed of custom chiefs elected by their peers sitting in District Councils of Chiefs. (2) The Council shall make its own rules of procedure. (3) The Council shall hold at least one meeting a year. Further meetings may be held at the request of the Council, Parliament, or the Government. (4) During the first sitting following its election the Council shall elect its Chairman.</p> <p>Art 30: (1) The National Council of Chiefs has a general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages. (2) The Council may be consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before Parliament.</p> <p>Art 31: Parliament shall by law provide for the organisation of the National Council of Chiefs and in particular for the role of chiefs at the village, island and district level.</p> <p>Art 47: (1) The administration of justice is vested in the judiciary, who are subject only to the Constitution and the law. The function of the judiciary is to resolve proceedings according to law. If there is no rule of law applicable to a matter before it, a court shall determine the matter according to substantial justice and whenever possible in conformity with custom.</p> <p>Art 51: Parliament may provide for the manner of the ascertainment of relevant roles of custom, and may in particular provide for persons knowledgeable in custom to sit with the judges of the Supreme Court or the Court of Appeal and take part in its proceedings.</p> <p>Art 52: Parliament shall provide for the establishment of village or island courts with jurisdiction over customary and other matters and shall provide for the role of chiefs in such courts.</p> <p>Art 73: All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.</p> <p>Art 74: The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.</p> <p>Art 78: (2) The Government shall arrange for the appropriate customary institutions or procedures to resolve disputes concerning the ownership of custom land.</p> <p>Art 79: (1) Notwithstanding Articles 73, 74 and 75 land transactions between an indigenous citizen and either a non-indigenous citizen or a non-citizen shall only be permitted with the consent of the Government. (2) The consent required under subarticle (1) shall be given unless the transaction is prejudicial to the interests of – (a) the custom owner or owners of the land; (b) the indigenous citizen where he is not the custom owner; (c) the community in whose locality the land is situated; or (d) the Republic of Vanuatu.</p> <p>Art 80: Notwithstanding Articles 73 and 74 the Government may own land acquired by it in the public interest.</p> <p>Art 81: (1) Notwithstanding Articles 73 and 74 the Government may buy land from custom owners for the purpose of transferring ownership of it to indigenous citizens or indigenous communities from over-populated islands. (2) When redistributing land in accordance with subarticle (1), the Government shall give priority to ethnic, linguistic, customary and geographical ties.</p> <p>Art 95: (2) Until otherwise provided by Parliament, the British and French laws in force or applied in Vanuatu immediately before the Day of Independence shall on and after that day continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom. (3) Customary law shall continue to have effect as part of the law of the Republic of Vanuatu.</p>	Official text: <a href="http://www.parliament.gov.vu/constitution.html">http://www.parliament.gov.vu/constitution.html</a>



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South and East Asia	Bangladesh 1972	Art 23: The State shall adopt measures to conserve the cultural traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture. Art 152: "law" means any Act, ordinance, order rule, regulation, bye-law, notification or other legal instrument, and any custom or usage, having the force of law in Bangladesh.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5684&amp;skip=0&amp;coi=BGD&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5684&amp;skip=0&amp;coi=BGD&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
South and East Asia	Bhutan 2008	Art 2, s 16: The Druk Gyalpo, in exercise of His Royal Prerogatives, may: (a) Award titles, decorations, dar for Lhengye and Nyi-Kyelma in accordance with tradition and custom Art 4, s 1: The State shall endeavour to preserve, protect and promote the cultural heritage of the country, including monuments, places and objects of artistic or historic interest, Dzongs, Lhakhangs, Goendeys, Ten-sum, Nyes, language, literature, music, visual arts and religion to enrich society and the cultural life of the citizens. Art 4, s 2: The State shall recognize culture as an evolving dynamic force and shall endeavour to strengthen and facilitate the continued evolution of traditional values and institutions that are sustainable as a progressive society. Art 4, s 3: The State shall conserve and encourage research on local arts, custom, knowledge and culture. Art 4, s 4: Parliament may enact such legislation as may be necessary to advance the cause of the cultural enrichment of Bhutanese society. Art 6, s 3: A person who applies for citizenship by naturalization shall: ... (d) Have a good knowledge of the culture, customs, traditions and history of Bhutan. Art 8, s 2: A Bhutanese citizen shall have the duty to preserve, protect and respect the environment, culture and heritage of the nation. Art 9, s 21: The State shall provide free access to basic public health services in both modern and traditional medicines. Art 9, s 23: The State shall encourage free participation in the cultural life of the community, promote arts and sciences and foster technological innovation	Official text: <a href="http://www.constitution.bt/TsaThrim%20Eng%20(A5).pdf">http://www.constitution.bt/TsaThrim%20Eng%20(A5).pdf</a>
South and East Asia	Brunei Darussalam 1984	Nil	Official text (?): <a href="http://confinder.richmond.edu/admin/docs/Brunei1984English.pdf">http://confinder.richmond.edu/admin/docs/Brunei1984English.pdf</a>
South and East Asia	Cambodia 1993	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5428&amp;skip=0&amp;coi=KHM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5428&amp;skip=0&amp;coi=KHM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
South and East Asia	China 1982	Art 4: All ethnic groups in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority ethnic groups and upholds and develops a relationship of equality, unity and mutual assistance among all of China's ethnic groups. Discrimination against and oppression of any ethnic group are prohibited; any act that undermines the unity of the ethnic groups or instigates division is prohibited. The state assists areas inhabited by minority ethnic groups in accelerating their economic and cultural development according to the characteristics and needs of the various minority ethnic groups. Regional autonomy is practiced in areas where people of minority ethnic groups live in compact communities; in these areas organs of self-government are established to exercise the power of autonomy. All ethnic autonomous areas are integral parts of the People's Republic of China. All ethnic groups have the freedom to use and develop their own spoken and written languages and to preserve or reform their own folkways and customs.	Official text: <a href="http://www.gov.cn/english/2005-08/05/content_20813.htm">http://www.gov.cn/english/2005-08/05/content_20813.htm</a>
South and East Asia	Democratic People's Republic of Korea 2005	Nil	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b56d0&amp;skip=0&amp;coi=PRK&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b56d0&amp;skip=0&amp;coi=PRK&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>

Region	Constitution	Scope of Provision	Source and Access
South and East Asia	India 1949	<p>Art 13: (3) In this article [<i>Laws inconsistent with or in derogation of the fundamental rights</i>], unless the context otherwise requires – (a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law</p> <p>Art 29: (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.</p> <p>Art 371A: (1) Notwithstanding anything in this Constitution – (a) no Act of Parliament in respect of – ... (ii) Naga customary law and procedure ... shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides</p> <p>Art 371G: Notwithstanding anything in this Constitution – (a) no Act of Parliament in respect of – ... (ii) Mizo customary law and procedure ... shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides: Provided that nothing in this clause shall apply to any Central Act in force in the Union territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986</p>	<p>Official text:  <a href="http://lawmin.nic.in/coi/coiason29july08.pdf">http://lawmin.nic.in/coi/coiason29july08.pdf</a></p>
South and East Asia	Indonesia 1945	<p>Art 18B: (2) The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.</p> <p>Art 28I: (3) The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations.</p>	<p>Unofficial text:  <a href="http://indonesianembassy.kiev.ua/about/files/fourth_const.pdf">http://indonesianembassy.kiev.ua/about/files/fourth_const.pdf</a></p>
South and East Asia	Japan 1947	Nil	<p>Official text (?):  <a href="http://www.ndl.go.jp/constitution/e/etc/c01.html">http://www.ndl.go.jp/constitution/e/etc/c01.html</a></p>
South and East Asia	Lao People's Democratic Republic 1991	<p>Art 8: Paragraph 1: The State implements the policy of solidarity and equality between the various ethnics. All ethnics have the right to preserve, develop their fine ethnic and national customs, traditions and culture, to avoid all act of ethnic segregation and differentiation. Paragraph 2: The State implements all measures to continuously develop and raise all ethnics socio-economic level.</p> <p>Art 19: Paragraph 2: The State develops the nation's fine cultural traditions in combination with the world progressive culture, restraining all negative ideological and cultural phenomenons. It promotes cultural, artistic, literature and press activities, including in mountainous regions. Antiques and sites of worship of national value are protected.</p> <p>Art 22: The Lao citizens without differentiation by gender, social status, education level, belief and ethnic are all equal in front of the law.</p> <p>Art 32: Lao citizens have the free right to conduct research and make use of scientific, technical and technological progress, to create arts and literature and conduct cultural activities not in contradiction with laws and regulations.</p> <p>Art 56: Paragraph 2: The Government manages unanimously the implementation of state obligations in all fields: political, economic, socio-cultural, defense, security and foreign policy.</p>	<p>Official text (?): <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5221a&amp;skip=0&amp;coi=LAO&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5221a&amp;skip=0&amp;coi=LAO&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a></p>

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South and East Asia	Malaysia 1957	<p>Art 8: (5) This Article <i>[equality before the law and anti-discrimination]</i> does not invalidate or prohibit – ... (c) any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service.</p> <p>Art 45: (1) Subject to Clause (4), the Senate shall consist of elected and appointed members as follows: ... (b) forty members shall be appointed by the Yang di-Pertuan Agong. (2) The members to be appointed by the Yang di-Pertuan Agong shall be persons who in his opinion have rendered distinguished public service or have achieved distinction in the professions, commerce, industry agriculture, cultural activities or social service or are representative of racial minorities or are capable of representing the interests of aborigines. (4) Parliament may by law- ... (c) decrease the number of appointed members or abolish appointed members.</p> <p>Art 76: (2) No law shall be made in pursuance of paragraph (a) of Clause (1) <i>[power of Parliament to legislate for States]</i> with respect to any matters of Islamic law or the custom of the Malays or to any matter of native law or custom in the States of Sabah and Sarawak and no Bill for a law under that paragraph shall be introduced into either House of Parliament until the Government of any State concerned has been consulted.</p> <p>Art 89: (1) Any land in a State which immediately before Merdeka Day was a Malay reservation in accordance with the existing law may continue as a Malay reservation in accordance with that law until otherwise provided by an Enactment of the Legislature of that State, being an Enactment- (a) passed by a majority of the total number of members of the Legislative Assembly and by the votes of not less than two-thirds of the members present and voting; and (b) approved by resolution of each House of Parliament passed by a majority of the total number of members of that House and by the votes of not less than two-thirds of the members voting. (2) Any land in a State which is not for the time being a Malay reservation in accordance with the existing law and has not been developed or cultivated may be declared as a Malay reservation in accordance with that law: Provided that- (a) where any land in a State is declared a Malay reservation under this Clause, an equal area of land in that State which has not been developed or cultivated shall be made available for general alienation; and (b) the total area of land in a State for the time being declared as a Malay reservation under this Clause shall not at any time exceed the total area of land in that State which has been made available for general alienation in pursuance of paragraph (a). (3) Subject to Clause (4), the Government of any State may, in accordance with the existing law, declare as a Malay reservation- (a) any land acquired by that Government by agreement for that purpose; (b) on the application of the proprietor, and with the consent of every person having a right or interest therein, any other land, and shall, in accordance with the existing law, immediately declare as a Malay reservation, in a case where any land ceases to be a Malay reservation, any other land of a similar character and of an area not exceeding the area of that land. (4) Nothing in this Article shall authorise the declaration as a Malay reservation of any land which at the time of the declaration is owned or occupied by a person who is not a Malay or in or over which such a person has then any right or interest. (5) Without prejudice to Clause (3), the Government of any State may, in accordance with law, acquire land for the settlement of Malays or other communities, and establish trusts for that purpose. (6) In this Article "Malay reservation" means land reserved for alienation to Malays or to natives of the State in which it lies; and "Malay" includes any person who, under the law of the State in which he is resident, is treated as a Malay for the purposes of the reservation of land. (7) Subject to Article 161A, this Article shall have effect notwithstanding any other provision of this Constitution; but (without prejudice to any such other provision) no land shall be retained or declared as a Malay reservation except as provided by this Article and Article 90.</p> <p>Art 90: (1) Nothing in this Constitution shall affect the validity of any restrictions imposed by law on the transfer or lease of customary land in the State of Negeri Sembilan or the State of Malacca, or of any interest in such land. (1A) For the purpose of Clause (1)- (a) "transfer" includes any charge, transmission or vesting, or creation of any lien or trust, or entry of any caveat, or any other form of dealing or disposal of whatever description or nature; and (b) "lease" includes any tenancy of whatever form or duration. (2) Notwithstanding anything in this Constitution, the existing law in the State of Trengganu with respect to</p>	<p>Official text, unofficial consolidation:  <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5e40&amp;skip=0&amp;coi=MYS&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5e40&amp;skip=0&amp;coi=MYS&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a></p>

Region	Constitution	Scope of Provision	Source and Access
		<p>Malay holdings shall continue in force until otherwise provided by an Enactment of the Legislature of that State passed and approved as described in Clause (1) of Article 89. (3) Any such Enactment of the Legislature of the State of Trengganu may make provision for Malay reservations corresponding with the existing law in force in any other State of a Ruler; and in that event the said Article 89 shall have effect in relation to Trengganu subject to the following modifications, that is to say: (a) in Clause (1), for the reference to land which immediately before Merdeka Day was a Malay reservation in accordance with the existing law, there shall be substituted a reference to land which, immediately before the passing of the said Enactment, was a Malay holding; and (b) subject as aforesaid, any reference to the existing law shall be construed as a reference to the said Enactment.</p> <p>Art 150: (6A) Clause (5) [<i>Proclamation of emergency not to be invalid on the grounds of inconsistency with the Constitution</i>] shall not extend the powers of Parliament with respect to any matter of Islamic law or the custom of the Malays, or with respect to any matter of native law or customs in the State of Sabah or Sarawak; nor shall Clause (6) validate any provision inconsistent with the provisions of this Constitution relating to any such matter or relating to religion, citizenship, or language.</p> <p>Art 153: (1) It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article. (2) Notwithstanding anything in this Constitution, but subject to the provisions of Article 40 and of this Article, the Yang di-Pertuan Agong shall exercise his functions under this Constitution and federal law in such manner as may be necessary to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and to ensure the reservation for Malays and natives of any of the States of Sabah and Sarawak of such proportion as he may deem reasonable of positions in the public service (other than the public service of a State) and of scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government and, when any permit or licence for the operation of any trade or business is required by federal law, then, subject to the provisions of that law and this Article, of such permits and licences. (3) The Yang di-Pertuan Agong may, in order to ensure in accordance with Clause (2) the reservation to Malays and natives of any of the States of Sabah and Sarawak of positions in the public service and of scholarships, exhibitions and other educational or training privileges or special facilities, give such general directions as may be required for that purpose to any Commission to which Part X applies or to any authority charged with responsibility for the grant of such scholarships, exhibitions or other educational or training privileges or special facilities; and the Commission or authority shall duly comply with the directions.</p> <p>Art 160: (2) In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say: "Aborigine" means an aborigine of the Malay Peninsula; ... "Law" includes written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof; ... "Malay" means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and- (a) was before Merdeka Day born in the Federation or in Singapore or born of parents one of whom was born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or (b) is the issue of such a person;</p> <p>Art 161A: (5) Article 89 shall not apply to the State of Sabah or Sarawak, and Article 8 shall not invalidate or prohibit any position of State law in the State of Sabah or Sarawak for the reservation of land for natives of the State or for alienation to them, or for giving them preferential treatment as regards the alienation of land by the State. (6) In this article "native" means- (a) in relation to Sarawak, a person who is a citizen and either belongs to one of the races specified in Clause (7) as indigenous to the State or is of mixed blood deriving exclusively from those races; and (b) in relation to Sabah, a person who is a citizen, is the child or grandchild of a person of a race indigenous to Sabah, and was born (whether on or after Malaysia Day or not) either in Sabah or to a father domiciled in Sabah at the time of the birth. (7) The races to be treated for the purposes of the definition of "native" in Clause (6) as indigenous to Sarawak are the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks, Kadayans, Kalabits, Kayans, Kenyahs (including Sabups and</p>	

Region	Constitution	Scope of Provision	Source and Access
		<p>Sipengs), Kajangs (including Sekapans, Kejamans, Lahanans, Punans, Tanjongs and Kanowits), Lugats, Lisums, Malays, Melanos, Muruts, Penans, Sians, Tagals, Tabuns and Ukits.</p> <p>Sch 8, art 1: (2)The Ruler may act in his discretion in the performance of the following functions (in addition to those in the performance of which he may act in his discretion under the Federal Constitution) that is to say: ... (d) any function as Head of the religion of Islam or relating to the custom of the Malays; ... (f) the appointment of persons to Malay customary ranks, titles, honours and dignities and the designation of the functions appertaining thereto.</p> <p>Sch 8 art 19: (2) The provisions affecting succession to the throne and the position of the Ruling Chiefs and similar Malay customary dignitaries may not be amended by the State Legislature.</p> <p>Sch 9, List 1 (Federal List), s 6: The machinery of government, subject to the State List, but including-... (e) (e) Government and administration of the Federal Territories of Kuala Lumpur and Labuan including Islamic law therein to the same extent as provided in item I in the State List and in respect of the Federal Territory of Labuan, native law and custom to the same extent as provided in item 13 of the Supplement to State List for States of Sabah and Sarawak.</p> <p>Sch 9, List 1 (Federal List), s 16: Welfare of the aborigines.</p> <p>Sch 9, List 2 (State List) s 1: Except with respect to the Federal Territories of Kuala Lumpur and Labuan, Islamic law and personal and family law of persons professing the religion of Islam...; Malay customs; ... the determination of matters of Islamic law and doctrine and Malay custom.</p> <p>Sch 9, List 2 (State List) s 2: Except with respect to the Federal Territories of Kuala Lumpur and Labuan, land including- ... (b) Malay reservations or, in the States of Sabah and Sarawak, native reservations.</p> <p>Sch 9, List 2A (Supplement to State List for Sabah and Sarawak) s 13: Native law and custom, including the personal law relating to marriage, divorce, guardianship, maintenance, adoption, legitimacy, family law, gifts or succession, testate or intestate; registration of adoptions under native law or custom; the determination of matters of native law or custom; the constitution, organization, and procedure of native courts (including the right of audience in such courts), and the jurisdiction and powers of such courts, which shall extend only to the matters included in this paragraph and shall not include jurisdiction in respect of offences except in so far as conferred by federal law.</p>	
South and East Asia	Maldives 2006	Nil	<p>Official text:  <a href="http://www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf">http://www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf</a></p>
South and East Asia	Mongolia 1992	<p>Art 8: (2) Section 1 of this Article [official language] shall not affect the right of national minorities of other tongues to use their native languages in education and communication and in the pursuit of cultural, artistic and scientific activities.</p>	<p>Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5a38&amp;skip=0&amp;coi=MNG&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5a38&amp;skip=0&amp;coi=MNG&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a></p> <p>See also, 1999 amendment:  <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4af7dde52&amp;skip=0&amp;coi=MNG&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4af7dde52&amp;skip=0&amp;coi=MNG&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a></p>
South and East Asia	Myanmar 2008	<p>S 354: Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality: (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.</p> <p>S 365: Every citizen shall, in accord with the law, have the right to freely develop literature, culture, arts, customs and traditions they cherish. In the process, they shall avoid any act detrimental to national solidarity. Moreover, any particular action which might adversely affect the interests of one or several other national races shall be taken only after coordinating with and obtaining the settlement of those affected.</p>	<p>Official text:  <a href="http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf">http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf</a></p>

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South and East Asia	Nepal 2007 (note: interim constitution only)	Art 17: (3) Each community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civility and heritage. Art 35: (18) The State shall pursue a policy of modernizing the traditional knowledge, skills and practices existing in the country by identifying and protecting them.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=46badd3b2&amp;skip=0&amp;coi=NPL&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=46badd3b2&amp;skip=0&amp;coi=NPL&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
South and East Asia	Philippines 1987	Art II, S 22: The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development. Art XII, S 5: The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being. The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain. Art XIII, S 6: The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands. The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law. Art XIV, S 17: The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies. Art XVI S 12: The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5470&amp;skip=0&amp;coi=PHL&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5470&amp;skip=0&amp;coi=PHL&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
South and East Asia	Republic of Korea 1948	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b4dd14&amp;skip=0&amp;coi=KOR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b4dd14&amp;skip=0&amp;coi=KOR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
South and East Asia	Singapore 1963	Art 2: (1) In this Constitution, unless it is otherwise provided or the context otherwise requires — ... "law" includes written law and any legislation of the United Kingdom or other enactment or instrument whatsoever which is in operation in Singapore and the common law in so far as it is in operation in Singapore and any custom or usage having the force of law in Singapore. Art 152: (1) It shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore. (2) The Government shall exercise its functions in such manner as to recognise the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.	Official text: <a href="http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?&amp;actno=Reved-CONST&amp;date=latest&amp;method=part">http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?&amp;actno=Reved-CONST&amp;date=latest&amp;method=part</a>
South and East Asia	Sri Lanka 1978	Art 14: (1) Every citizen is entitled to - ... (f) the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language;	Official text: <a href="http://www.priu.gov.lk/Cons/1978Constitution/Introduction.htm">http://www.priu.gov.lk/Cons/1978Constitution/Introduction.htm</a>
South and East Asia	Thailand 2007	S 66: Persons assembling as to be a community, local community or traditional local community shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion. S 289: A local government organisation has the duty to conserve local arts, custom, wisdom and good culture of locality. A local government organisation has the right to provide education and professional training in accordance with the suitability to and the need of that locality and participate in the provision of education and training by State with regard to the compliance with the national education standard and system. In providing education and training under paragraph two, the local government organisation shall also have regard to the conservation of local arts, custom, wisdom and good culture.	Unofficial text: <a href="http://www.asianlii.org/th/legis/const/2007/1.html#C03">http://www.asianlii.org/th/legis/const/2007/1.html#C03</a>

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South and East Asia	Timor-Leste 2002	S 2: (4) The State shall recognise and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law. S 59: (1) The State shall recognise and guarantee that every citizen has the right to education and culture, and it is incumbent upon it to promote the establishment of a public system of universal and compulsory basic education that is free of charge in accordance with its ability and in conformity with the law. ... (5) Everyone has the right to cultural enjoyment and creativity and the duty to preserve, protect and value cultural heritage.	Official text: <a href="http://www.gov.east-timor.org/constitution/constitution-Timor-Leste.pdf">http://www.gov.east-timor.org/constitution/constitution-Timor-Leste.pdf</a>
South and East Asia	Viet Nam 1992	Art 5: The Socialist Republic of Vietnam is the unified State of all nationalities living on the territory of Vietnam. The State carries out a policy of equality, solidarity and mutual assistance among all nationalities, and forbids all acts of national discrimination and division. Every nationality has the right to use its own language and system of writing, to preserve its national identity, and to promote its fine customs, habits, traditions and culture. The State carries out a policy of comprehensive development and gradually raises the material and spiritual living conditions of the national minorities.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b573c&amp;skip=0&amp;coi=VNM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b573c&amp;skip=0&amp;coi=VNM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Asia	Afghanistan 2004	Art 84: Members of the House of Elders shall be elected and appointed as follows: ... (3) The remaining one third of the membership shall be appointed by the President, for a five year term, from amongst experts and experienced personalities, including two members from amongst the impaired and handicapped, as well as two from nomads.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;skip=0&amp;coi=AFG&amp;x=8&amp;y=8">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;skip=0&amp;coi=AFG&amp;x=8&amp;y=8</a>
West Asia	Bahrain 1973	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=48b54f262&amp;skip=0&amp;coi=BHR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=48b54f262&amp;skip=0&amp;coi=BHR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Asia	Iraq 2004 (note: interim constitution only)	Nil	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=454f50804&amp;skip=0&amp;coi=IRQ&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=454f50804&amp;skip=0&amp;coi=IRQ&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Asia	Islamic Republic of Iran 1979	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b56710&amp;skip=0&amp;coi=IRN&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b56710&amp;skip=0&amp;coi=IRN&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Asia	Jordan 1952	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b53310&amp;skip=0&amp;coi=JOR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b53310&amp;skip=0&amp;coi=JOR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Asia	Kuwait 1962	Nil	Unofficial text: <a href="http://www.servat.unibe.ch/icl/ku00000_.html">http://www.servat.unibe.ch/icl/ku00000_.html</a>
West Asia	Lebanon 1926	Nil	Unofficial text: <a href="http://www.servat.unibe.ch/icl/le00000_.html">http://www.servat.unibe.ch/icl/le00000_.html</a>
West Asia	Oman 1996	Nil	Official text (?): <a href="http://www.omanet.om/english/government/basiclaw/overview.asp?cat=gov&amp;subcat=blaw">http://www.omanet.om/english/government/basiclaw/overview.asp?cat=gov&amp;subcat=blaw</a>

Region	Constitution	Scope of Provision	Source and Access
West Asia	Pakistan 1973	<p>Preamble: Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures</p> <p>Art 8: (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void</p> <p>Art 28: Subject to Article 251 [national language] any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose</p> <p>Art 36: The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services</p> <p>Art 203B: In this Chapter [Federal Shariat Court], unless there is anything repugnant in the subject or context – ... "law" includes any custom or usage having the force of law but does not include the Constitution, Muslim personal law, any law relating to the procedure of any court or tribunal or, until the expiration of ten years from the commencement of this Chapter, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure</p> <p>Art 246: In the Constitution – (a) "Tribal Areas" means the areas in Pakistan which, immediately before the commencing day, were Tribal Areas, and includes – (i) the Tribal Areas of Baluchistan and the North-West Frontier Province; and (ii) the former States of Amb, Chitral, Dir and Swat; and (b) "Provincially Administered Tribal Areas" means – (i) the districts of Chitral, Dir and Swat (which includes Kalam) [the Tribal Area in Kohistan district,] Malakand Protected Area, the Tribal Area adjoining Mansehra district and the former State of Amb; and (ii) Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai district and Marri and Bugti Tribal territories of Sibi district; and (c) "Federally Administered Tribal Areas" includes – (i) Tribal Areas, adjoining Peshawar district, (ii) Tribal Areas adjoining Kohat district, (iii) Tribal Areas adjoining Bannu district, (iv) Tribal Areas adjoining Dera Ismail Khan district, (v) Bajaur Agency, (va) Orazkai Agency, (vi) Mohamand Agency, (vii) Khyber Agency, (viii) Kurran Agency, (ix) North Waziristan Agency, and (x) South Waziristan Agency.</p> <p>Art 247: (3) No Act of Majlis-e-Shoora (Parliament) shall apply to any Federally Administered Tribal Area or any part thereof, unless the President so directs, and no Act of Majlis-e-Shoora (Parliament) or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction. (7) Neither the Supreme Court nor a High Court shall exercise jurisdiction under the Constitution in relation to a Tribal Area, unless Majlis-e-Shoora (Parliament) by law otherwise provides: Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day.</p>	<p>Official text (?):  <a href="http://www.pakistani.org/pakistan/constitution/">http://www.pakistani.org/pakistan/constitution/</a></p>
West Asia	Qatar 2003	<p>Art 57: The respect of the Constitution, compliance with the laws issued by Public Authority, abiding by public order and morality, observing national traditions and established customs is a duty of all who reside in the State of Qatar or enter its territory.</p>	<p>Official text (?):  <a href="http://english.mofa.gov.qa/details.cfm?id=80">http://english.mofa.gov.qa/details.cfm?id=80</a></p>
West Asia	Saudi Arabia 1992	Nil	<p>Unofficial text (?):  <a href="http://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx">http://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx</a></p>
West Asia	Syrian Arab Republic 1973	<p>Art 26: Every citizen has the right to participate in the political, economic, social, and cultural life. The law regulates this participation</p>	<p>Don't know: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;pp;docid=44d8a4e84&amp;skip=0&amp;coi=SYR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;pp;docid=44d8a4e84&amp;skip=0&amp;coi=SYR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a></p>
West Asia	United Arab Emirates 1971	Nil	<p>Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;</a></p>



Region	Constitution	Scope of Provision	Source and Access
			p;docid=48eca8132&skip=0&coi=ARE &querysi=constitution&searchin=title& &display=10&sort=date
West Asia	Yemen 1994	Nil	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3fc4c1e94&amp;skip=0&amp;coi=YEM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3fc4c1e94&amp;skip=0&amp;coi=YEM&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Europe	Andorra 1993	Art 34: The State shall the guarantee the conservation, promotion and diffusion of the historical, cultural and artistic heritage of Andorra. Art 79: (1) The Comuns, as organs of representation and administration of the Parròquies, are public corporations with legal status and with local regulatory powers subject to law by means of ordinations, regulations and decrees. Within the area of their jurisdiction subject to the Constitution, the laws and tradition, the Comuns function under the principle of self-government recognised and guaranteed by the Constitution. (2)The Comuns represent the interests of the Parròquies, approve and carry out the communal budget, fix and develop their public policies within the bounds of their territory and manage and administer all parish property, whether in the communal, public, patrimonial or private domain. Art 80: (1) Within the framework of their administrative and financial autonomy, the Comuns have their powers delimited by a Llei Qualificada, at least in the following matters: (a) Population census. (b) Electoral roll. Participation in the management of the electoral procedure and administration under the terms provided for by the law. (c) Popular consultations. (d) Commerce, industry and professional activities. (e) Delimitation of the communal territory. (f) Property of their own, and of the communal public domain. (g) Natural resources. (h) Cadastral register. (i) Local planning. (j) Public thoroughfares. (k) Culture, sports and social activities. (l) Communal public services. (2) Within the framework of the State's power to impose taxes, the aforementioned Llei Qualificada determines the economic and fiscal faculties of the Comuns needed for the exercise of their jurisdiction. These faculties shall deal at least, with the use and exploitation of natural resources, traditional tributes, and with the taxes for communal services, administrative licences, establishment of commercial, industrial and professional activities and real estate. (3) Matters under the jurisdiction of the State may be delegated to the Parròquies by law. Art 84: The laws shall take into account custom and usage in order to determine the jurisdiction of Quarts and Veïnats, as well as their relationship with the Comuns.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3ae6b52110&amp;skip=0&amp;coi=AND&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3ae6b52110&amp;skip=0&amp;coi=AND&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Europe	Austria 1920	Nil	Unofficial text: <a href="http://www.servat.unibe.ch/icl/au00000_.html">http://www.servat.unibe.ch/icl/au00000_.html</a>
West Europe	Belgium 1994	Nil	Official text: <a href="http://www.fed-parl.be/constitution_uk.html">http://www.fed-parl.be/constitution_uk.html</a>
West Europe	Cyprus 1960	Nil	Official text (?): <a href="http://www.cyprus.gov.cy/portal/portal.nsf/0/C44572D7363776ACC2256EBD004F3BB3?OpenDocument">http://www.cyprus.gov.cy/portal/portal.nsf/0/C44572D7363776ACC2256EBD004F3BB3?OpenDocument</a>
West Europe	Denmark 1953	Nil	Unofficial text: <a href="http://www.servat.unibe.ch/icl/da00000_.html">http://www.servat.unibe.ch/icl/da00000_.html</a>
West Europe	Finland 1999	S 17: The national languages of Finland are Finnish and Swedish. The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis. The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.	Unofficial text: <a href="http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf">http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf</a>

Region	Constitution	Scope of Provision	Source and Access
		S 121: Finland is divided into municipalities, whose administration shall be based on the self-government of their residents. Provisions on the general principles governing municipal administration and the duties of the municipalities are laid down by an Act. The municipalities have the right to levy municipal tax. Provisions on the general principles governing tax liability and the grounds for the tax as well as on the legal remedies available to the persons or entities liable to taxation are laid down by an Act. Provisions on self-government in administrative areas larger than a municipality are laid down by an Act. In their native region, the Sami have linguistic and cultural self-government, as provided by an Act.	
West Europe	France 1958	Art 77: After approval of the agreement by the vote provided for in article 76, the institutional Act passed after consultation with the deliberative assembly of New Caledonia shall determine, in order to ensure the development of New Caledonia in accordance with the guidelines set out in that agreement and as required for its implementation: - the powers of the State which are to be transferred definitively to the institutions of New Caledonia, at what time and in what manner such transfers are to be made, and how the costs incurred thereby are to be apportioned; - the rules for the organization and operation of the institutions of New Caledonia, notably the circumstances in which certain kinds of instrument passed by the deliberative assembly may be referred to the Constitutional Council for review before publication; - the rules concerning citizenship, the electoral system, employment, and personal status as laid down by customary law; - the circumstances and the time limits within which the population concerned in New Caledonia is to vote on the attainment of full sovereignty. Any other measures required to give effect to the agreement referred to in article 76 shall be determined by statute.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b594b&amp;skip=0&amp;coi=FRA&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b594b&amp;skip=0&amp;coi=FRA&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Europe	Germany 1949	Nil	Official text (?): <a href="https://www.btg-bestellservice.de/pdf/80201000.pdf">https://www.btg-bestellservice.de/pdf/80201000.pdf</a>
West Europe	Greece 2001	Nil	Unofficial text (?): <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4c52794f2&amp;skip=0&amp;coi=GRC&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4c52794f2&amp;skip=0&amp;coi=GRC&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Europe	Iceland 1944	Nil	Official text: <a href="http://www.government.is/constitution/">http://www.government.is/constitution/</a>
West Europe	Ireland 1937	Nil	Official text: <a href="http://www.constitution.ie/reports/ConstitutionofIreland.pdf">http://www.constitution.ie/reports/ConstitutionofIreland.pdf</a>
West Europe	Italy 1948	Nil	Official text: <a href="http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf">http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf</a>
West Europe	Liechtenstein 1921	Nil	Official text: <a href="http://www.liechtenstein.li/en/pdf-fl-staat-verfassung-sept2003.pdf">http://www.liechtenstein.li/en/pdf-fl-staat-verfassung-sept2003.pdf</a>
West Europe	Luxembourg 1868	Nil	Unofficial text: <a href="http://www.servat.unibe.ch/icl/lu00000_.html">http://www.servat.unibe.ch/icl/lu00000_.html</a>
West Europe	Malta 1964	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5550&amp;skip=0&amp;coi=MLT&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3ae6b5550&amp;skip=0&amp;coi=MLT&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Europe	Monaco 1962	Nil	Unofficial text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3e68a6f34&amp;skip=0&amp;coi=MCO&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=3e68a6f34&amp;skip=0&amp;coi=MCO&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Europe	Netherlands 2002	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;</a>

Region	Constitution	Scope of Provision	Source and Access
			p;docid=3ae6b5730&skip=0&coi=NLD&querysi=constitution&searchin=title&display=10&sort=date
West Europe	Norway 1814	Art 110a: It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3ae6b4f94&amp;skip=0&amp;coi=NOR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3ae6b4f94&amp;skip=0&amp;coi=NOR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Europe	Portugal 1976	Nil	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3ae6b5520&amp;skip=0&amp;coi=PRT&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;p;docid=3ae6b5520&amp;skip=0&amp;coi=PRT&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>
West Europe	Spain 1978	<p>S 125: Citizens may engage in popular action and take part in the administration of justice through the institution of the jury, in the manner and with respect to those criminal trials as may be determined by law, as well as in customary and traditional courts.</p> <p>S 143: (1) In the exercise of the right to self-government recognized in section 2 of the Constitution, bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status may accede to self-government and form Self-governing Communities (Comunidades Autónomas) in conformity with the provisions contained in this Part and in the respective Statutes. (<i>Senate Standing Orders, section 143</i>) (2) The right to initiate the process towards self-government lies with all the Provincial Councils concerned or with the corresponding inter-island body and with two thirds of the municipalities whose population represents at least the majority of the electorate of each province or island. These requirements must be met within six months from the initial agreement reached to this aim by any of the local Corporations concerned. (3) If this initiative is not successful, it may be repeated only after five years have elapsed.</p> <p>S 147: (1) Within the terms of the present Constitution, Statutes of Autonomy shall be the basic institutional rule of each Self-governing Community and the State shall recognize and protect them as an integral part of its legal system. (2) The Statutes of Autonomy must contain: (a) The name of the Community which best corresponds to its historic identity, (b) Its territorial boundaries, (c) The name, organization and seat of its own autonomous institutions, (d) The powers assumed within the framework laid down by the Constitution and the basic rules for the transfer of the corresponding services; (3) Amendment of Statutes of Autonomy shall conform to the procedure established therein and shall in any case require approval of the Cortes Generales through an organic act. (<i>Senate Standing Orders, section 143</i>)</p> <p>S 148: (1) The Self-governing Communities may assume competences over the following matters: (i) Organization of their institutions of self-government, (ii) Changes in municipal boundaries within their territory and, in general, functions appertaining to the State Administration regarding local Corporations, whose transfer may be authorized by legislation on local government, (iii) Town and country planning and housing, (iv) Public works of interest to the Self-governing Community, within its own territory, (v) Railways and roads whose routes lie exclusively within the territory of the Self-governing Community and transport by the above means or by cable fulfilling the same conditions, (vi) Ports of haven, recreational ports and airports and, in general, those which are not engaged in commercial activities, (vii) Agriculture and livestock raising, in accordance with general economic planning, (viii) Woodlands and forestry, (ix) Management of environmental protection, (x) Planning, construction and exploitation of hydraulic projects, canals and irrigation of interest to the Self-governing Community; mineral and thermal waters, (xi) Inland water fishing, shellfish industry and fishfarming, hunting and river fishing, (xii) Local fairs, (xiii) Promotion of economic development of the Self-governing Community within the objectives set by national economic policy, (xiv) Handicrafts, (xv) Museums, libraries and music conservatories of interest to the Self-governing Community, (xvi) The Self-governing Community's monuments of interest, (xvii) The promotion of culture and research and, where applicable, the teaching of the Self-governing Community's language, (xviii) The promotion and</p>	Official text: <a href="http://www.senado.es/constitu_i/index.html">http://www.senado.es/constitu_i/index.html</a>

Region	Constitution	Scope of Provision	Source and Access
		<p>planning of tourism within its territorial area, (xix) The promotion of sports and the proper use of leisure, (xx) Social assistance, (xxi) Health and hygiene, (xxii) The supervision and protection of its buildings and installations. Coordination and other powers relating to local police forces under the terms to be laid down by an organic act. (2) After five years, the Self-governing Communities may, by amendment of their Statutes of Autonomy, progressively enlarge their powers within the framework laid down in section 149. S 149: (1) The State shall have exclusive competence over the following matters: ... (viii) Civil legislation, without prejudice to the preservation, modification and development by the Self-governing Communities of their civil law, foral or special, whenever these exist, and traditional charts. In any event rules for the application and effectiveness of legal provisions, civil relations arising from the forms of marriage, keeping of records and drawing up to public instruments, bases of contractual liability, rules for resolving conflicts of law and determination of the sources of law in conformity, in this last case, with the rules of traditional charts or with those of foral or special laws.</p> <p>Additional Provision 1: The Constitution protects and respects the historic rights of the territories with traditional charts (<i>fueros</i>). The general updating of historic rights shall be carried out, where appropriate, within the framework of the Constitution and of the Statutes of Autonomy.</p> <p>Additional Provision 2: The provision of section 12 of this Constitution regarding the coming of age, shall not be prejudicial to cases in which traditional charts are applicable within the sphere of private law.</p>	
West Europe	<p>Sweden – note: constitution comprised of multiple documents (The Instrument of Government 1974, The Act of Succession 1810, The Freedom of the Press Act 1949, and the Fundamental Law on Freedom of Expression 1991).</p>	<p><u>The Instrument of Government 1974</u>  Ch 1, Art 2: (1) Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person. The personal, economic and cultural welfare of the private person shall be fundamental aims of public activity. In particular, it shall be incumbent upon the public institutions to secure the right to health, employment, housing and education, and to promote social care and social security. ... (3) The public institutions shall promote the ideals of democracy as guidelines in all sectors of society and protect the private and family lives of private persons. The public institutions shall promote the opportunity for all to attain participation and equality in society. The public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the private person. (4) Opportunities should be promoted for ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own.</p> <p>Ch 2, Art 12: (2) The restrictions referred to in paragraph one [<i>restrictions on particular rights</i>] may be imposed only to satisfy a purpose acceptable in a democratic society. The restriction must never go beyond what is necessary having regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion as one of the fundamentals of democracy. No restriction may be imposed solely on grounds of a political, religious, cultural or other such opinion.</p> <p>Ch 8, Art 7: With authority in law, the Government may, without hindrance of the provisions of Article 3 or 5, adopt, by means of a statutory instrument, provisions relating to matters other than taxes, provided such provisions relate to any of the following matters: ... (4) the cultural environment, hunting, fishing, animal protection, or nature conservation and environmental protection</p> <p><u>The Act of Succession 1810</u>  Nil  <u>The Freedom of the Press Act 1949</u>  Ch 1, Art 8: Provisions laid down in law apply in respect of the rights vested in the originator of a work of literature or art or the originator of a photographic picture, of rights neighbouring on such copyright, and the prohibition of the reproduction of works of literature or art in such a way as to encroach upon cultural interests.</p> <p>Ch7, Art 4: With due regard to the purpose of freedom of the press for all under Chapter 1, the following acts shall be deemed to be offences against the freedom of the press if committed by means of printed matter and if they are punishable under law: ... (11) agitation against a population group, whereby a person threatens or expresses contempt for a population group or other such group with allusion to race, colour, national or ethnic origin, religious faith or sexual orientation</p>	<p>Official text:  <a href="http://www.riksdagen.se/templates/R_Page_____6357.aspx">http://www.riksdagen.se/templates/R_Page_____6357.aspx</a></p>

Region	Constitution	Scope of Provision	Source and Access
		<u>The Fundamental Law on Freedom of Expression 1991</u> Nil	
West Europe	Switzerland 1998	Nil	Official text (?): <a href="http://www.admin.ch/ch/e/rs/1/101.en.pdf">http://www.admin.ch/ch/e/rs/1/101.en.pdf</a>
West Europe	Turkey 1982	Art 170: Measures shall be introduced by law to secure co-operation between the state and the inhabitants of villages located in or near forests in the supervision and exploitation of forests for the purpose of ensuring their conservation and improving the living conditions of their inhabitants; the law shall also regulate the development of areas which technically and scientifically ceased to be forests before 31 December 1981, the identification of areas whose preservation as forest is considered technically and scientifically useless, their exclusion from forest boundaries, their improvement by the state for the purpose of settling all or some of the inhabitants of forest villages in them, and their allocation to these villages. The state shall take measures to facilitate the acquisition, by these inhabitants, of farming equipment and other inputs. The land owned by villagers resettled outside a forest shall immediately be reforested as a state forest.	Official text: <a href="http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4c4458e42&amp;skip=0&amp;coi=TUR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date">http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&amp;docid=4c4458e42&amp;skip=0&amp;coi=TUR&amp;querysi=constitution&amp;searchin=title&amp;display=10&amp;sort=date</a>

## Annex B – Bibliography of statutory provisions

Jurisdiction	Legislation	Scope of provision	Access
Australia	Aboriginal and Torres Strait Islander Heritage Protection Act 1984	The purposes of this Act are the preservation and protection from injury or desecration of areas and objects of particular significance to Aboriginals. The Minister may, upon application made orally or in writing by or on behalf of an Aboriginal or a group of Aboriginals seeking the preservation or protection of a specified area from injury or desecration, make a declaration in relation to the area. A declaration shall contain provisions relating to the protection of the area from injury or desecration. The making of a declaration relating to an Aboriginal place does not affect any obligation under any law relating to the protection or conservation of land unless the obligation is inconsistent with the declaration. A local Aboriginal community may enter into an Aboriginal Cultural Heritage Agreement with a person who owns or possesses any Aboriginal cultural property in Victoria. Aboriginal cultural property may be subject to compulsory acquisition by the Minister.	<a href="http://faolex.fao.org/docs/texts/aus19125.doc">http://faolex.fao.org/docs/texts/aus19125.doc</a>
Australia	Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987	This Act provides for the management of the land vested in Aboriginal Corporations. Framlingham Forest shall be vested in the Kirrae Whurrong Aboriginal Corporation. The Corporation will have the full power of management, control and enjoyment of Framlingham Forest, subject to the law of Victoria and the Commonwealth and the power to transfer its interest in Framlingham Forest to another incorporated Aboriginal group. The Kirrae Whurrong Aboriginal Corporation may make by-laws for the management, access, conservation, fire protection, development and use of Framlingham Forest.	<a href="http://faolex.fao.org/docs/texts/aus6405.doc">http://faolex.fao.org/docs/texts/aus6405.doc</a>
Australia	Evidence Act 1995	S 72: The hearsay rule does not apply to evidence of a representation about the existence or non-existence, or the content, of the traditional laws and customs of an Aboriginal or Torres Strait Islander group. S 78A: The opinion rule does not apply to evidence of an opinion expressed by a member of an Aboriginal or Torres Strait Islander group about the existence or non-existence, or the content, of the traditional laws and customs of the group. Dictionary, Part 1: <i>traditional laws and customs</i> of an Aboriginal or Torres Strait Islander group (including a kinship group) includes any of the traditions, customary laws, customs, observances, practices, knowledge and beliefs of the group.	<a href="http://www.comlaw.gov.au/Details/C2011C00207">http://www.comlaw.gov.au/Details/C2011C00207</a>
Australia	Native Title Act 1993	S 3: The main objects of the Act are: (a) to provide for the recognition and protection of native title; (b) to establish ways in which the future dealings affecting native title may proceed and to set standards for those dealings; (c) to establish a mechanism for determining claims to native title; and (d) to provide for, or permit, the validation of past acts invalidated because of the existence of native title. Part 2 deals with the effect of validation of native title in relation to past acts of the Commonwealth or a State or Territory. S 11: Native title is not able to be extinguished contrary to this Act. S 24BB: Subject to this Act, after 30 June 1993, the common law of Australia in respect of native title has the force of law of the Commonwealth. Native title holders may, under an agreement with the Commonwealth, State or Territory surrender their native title and interests in relation to land and waters. Part 3 deals with applications for the determination of a native title to the Native Title Registrar.	<a href="http://faolex.fao.org/docs/texts/aus15378.doc">http://faolex.fao.org/docs/texts/aus15378.doc</a>
Australia	Torres Strait Fisheries Act 1984	S 3: definitions for Community Fishing, Traditional Inhabitants, Traditional Fishing and Treaty Endorsement. S 8: in the administration of this Act, regard shall be had to the rights and obligations conferred on Australia by the Torres Strait Treaty and in particular to the traditional way of life and livelihood of traditional inhabitants, including their rights in relation to traditional fishing S 15-2: where traditional inhabitants who are citizens of Papua New Guinea had customarily engaged in traditional fishing in a specific area, the Governor-General may declare that area to be an area in the vicinity of the Protected Zone Part IV: licenses for community and other commercial fishing	<a href="http://faolex.fao.org/docs/pdf/qs40851.pdf">http://faolex.fao.org/docs/pdf/qs40851.pdf</a>
Australia – New South Wales	Evidence Act 1995	S 72: The hearsay rule does not apply to evidence of a representation about the existence or non-existence, or the content, of the traditional laws and customs of an Aboriginal or Torres Strait Islander group. S 78A: The opinion rule does not apply to evidence of an opinion expressed by a member of an Aboriginal or Torres Strait Islander group about the existence or non-existence, or the content, of the traditional laws and customs of the group. Dictionary, Part 1: "traditional laws and customs" of an Aboriginal or Torres Strait Islander group (including a kinship group) includes any of the traditions, customary laws, customs, observances, practices, knowledge and beliefs of the group.	<a href="http://www.legislation.nsw.gov.au/xref/inforce/?xref=Type%3Dact%20AND%20Year%3D1995%20AND%20no%3D25&amp;nohits=y">http://www.legislation.nsw.gov.au/xref/inforce/?xref=Type%3Dact%20AND%20Year%3D1995%20AND%20no%3D25&amp;nohits=y</a>

Jurisdiction	Legislation	Scope of provision	Access
Australia - New South Wales	Forestry and National Park Estate Act 1998	S 12: transfers certain State forest and other Crown lands (as listed in Sch 6) to relevant Aboriginal Land Councils.	<a href="http://faolex.fao.org/docs/texts/nsw17319.doc">http://faolex.fao.org/docs/texts/nsw17319.doc</a>
Australia - Northern Territory	Aboriginal Land Act 1978	S 4: prohibits persons entering onto Aboriginal land except in accordance with a permit, subject to any other law. An Aboriginal who is entitled by tradition to enter and/or remain on an area of Aboriginal land may do so. S 5: the Land Council may issue permits for the area in which Aboriginal land or a road is situated. The traditional Aboriginal owners of Aboriginal land may issue a permit to enter onto it, or use a road that is bordered by it, subject to such conditions as they think fit. S 12: the Administrator may close seas within 2km of Aboriginal land to any persons other than Aboriginals who are entitled by tradition to enter and use those seas, and who do so in accordance with tradition. S 15: the Land Council may issue permits to enter closed seas subject to conditions they think fit	<a href="http://faolex.fao.org/docs/texts/nt15764.doc">http://faolex.fao.org/docs/texts/nt15764.doc</a>
Australia - Queensland	Aboriginal Land Act 1991	S 10: defines Aboriginal land Part 3: provides procedures to be followed in granting transferable land and Aboriginal land. Part 4: contains dispositions on the claiming of land Part 5: regulates the granting of land as Aboriginal land. When land is granted, a reservation needs to be made in favour of the Crown for all minerals and petroleum on and below the surface of the land. A reservation is also made for forest products and quarry material, as well as for land that is part of national reserves. Part 8: establishes the Land Tribunal as the body responsible for solving disputes that might arise in the application of this Act	<a href="http://faolex.fao.org/docs/pdf/qs40459.pdf">http://faolex.fao.org/docs/pdf/qs40459.pdf</a>
Australia - Queensland	Community Services (Aborigines) Act 1984	S 80: for any council area, there may be an Aboriginal Court S 81: jurisdiction of Aboriginal Courts: anything in this Act, or by by-laws of Aboriginal council; relating to breaches of by-laws, disputes concerning matters governed by usage and customs of the community and is not a breach of by-laws or laws of Commonwealth or State Part 10: provisions relating to access to Aboriginal land (e.g. S 166: Aboriginal council may make by-laws regulating access to their land) S 174: subject to Nature Conservation Act 1992, right to take marine products or fauna by traditional means for consumption by members of the community, but not to sell or dispose for gain of any marine product S 175: if there is no reservation to the Crown of forest products or quarry material on or below the surface of Aboriginal land, the Aboriginal council may authorise the gathering or digging of such for use in the council area S 176: subject to Nature Conservation Act 1992, right of an Aboriginal resident of a council area to take forest products or quarry material for use within the council's area	<a href="http://faolex.fao.org/docs/pdf/qs41161.pdf">http://faolex.fao.org/docs/pdf/qs41161.pdf</a>
Australia - Queensland	Land Act 1994	S 27: emphasises that land administered under this Act must not be dealt with in a way inconsistent with the Native Title Act 1993 (Cth) and Native Title (Qld) Act 1003 S 28: if native title exists over land, it may still be dealt with under this Act S 29: if land is entered under Ch 7, Pt 1, Div 3 and the land is in the native title register or has been transferred under the Aboriginal Land Act 1991 or Torres Strait Islander Land Act 1991, the entry must take Aboriginal traditions and Islander customs into consideration	<a href="http://faolex.fao.org/docs/pdf/qs40760.pdf">http://faolex.fao.org/docs/pdf/qs40760.pdf</a>
Australia - Queensland	Torres Strait Islander Land Act 1991	This Act provides for the grant of land as Torres Strait Islander land. It recognizes that the land is of spiritual, social, historical, cultural and economic importance to Torres Strait Islanders. Pt 2: provides basic concepts on Island custom and what is to be considered available land that is it claimable under the Act. Pt 3: provides procedure for the granting of transferable land as Torres Strait Islanders land Pt 4: regulates claims for claimable land Pt 5: regulates grant of claimable land as Torres Strait Islanders land Pt 6: preserves the Crown's use of land that becomes Torres Strait Islanders land Pt 8: establishes and regulates the operation of the Land Tribunal for proceedings related to land claims under the Act.	<a href="http://faolex.fao.org/docs/pdf/qs40850.pdf">http://faolex.fao.org/docs/pdf/qs40850.pdf</a>
Austria - Kärnten	Carinthia Wood and Pasture Exploitation Law 2003	This Law lays down provisions relating to the right of wood and pasture exploitation in the Region of Carinthia. Chapters: General provisions (I); New regulation and regulation of traditional rights (II); Transfer of exploitation rights (III); Safeguard of rights of use (IV); Basic rights of wood cutting in case of need (V); Special field services (VI); Authorities and proceedings (VII); Penalties (VIII).	In German: <a href="http://faolex.fao.org/docs/pdf/aut61483.pdf">http://faolex.fao.org/docs/pdf/aut61483.pdf</a>



Jurisdiction	Legislation	Scope of provision	Access
Austria - Niederösterreich	Regional Constitutional Land Law 1975	In order to create and maintain a sustainable and efficient agriculture, property rights, rights of use and cultivation rights shall be consolidated by means of reclassification of the agriculture and forestry property, as well as by re-ordering agricultural and forestry enterprises. Parts: Land consolidation (I); Plotting of common agricultural land and regulations concerning common rights of use and common rights of administration (II); Authorities and proceedings (III).	In German: <a href="http://faolex.fao.org/docs/texts/aut72952.doc">http://faolex.fao.org/docs/texts/aut72952.doc</a>
Austria - Oberösterreich	Upper Austria Right of Passage Law 1998	Art 1: right of passage allows persons, animals and their appurtenances to pass over somebody else's property. Pt 2: Customary right of passage	In German: <a href="http://faolex.fao.org/docs/texts/aut81699.doc">http://faolex.fao.org/docs/texts/aut81699.doc</a>
Bangladesh	Land Reform Ordinance 1984 (Ordinance No. X of 1984)	The Ordinance regulates the Bangladesh custom of leasing land, called barga. Art 9: cultivating land belonging to another person and sharing the resulting production is allowed only under a barga contract. Art 11: The barga contract will terminate if: the bargadar fails to cultivate the land; he has produced less than the expected average compared to other barga cultivations for that area; he has used the land for purposes other than agriculture; he has surrendered his right of cultivation; he is not personally tending the barga land; or the barga landowner reclaim the land for personal cultivation. Art 12: division of the produce between the owner and the bargadar	<a href="http://faolex.fao.org/docs/pdf/bgd35593.pdf">http://faolex.fao.org/docs/pdf/bgd35593.pdf</a>
Barbados	Limitation and Prescription Act 1891 [Cap 232]	S 35: no claim which may be made, including by custom, to any easement or right to watercourse which has been enjoyed without interruption for 20 years shall be defeated by showing only that such easement was first enjoyed at any time prior to that 20 years, but may be defeated in any other way now legal	<a href="http://faolex.fao.org/docs/pdf/bar80911.pdf">http://faolex.fao.org/docs/pdf/bar80911.pdf</a>
Bhutan	Forest and Nature Conservation Act of Bhutan 1995	S 17: (a) Ministry may make rules for the establishment of community forests on Government Reserved Forest; (b) such rules may provide for the transfer of ownership of forest produce to appropriate groups of inhabitants of communities adjoining the forest; (c) the community shall manage the forest for sustainable use	<a href="http://www.moa.gov.bt/moa/downloads/downloadFiles/MoADownload4wa6517jw.pdf">http://www.moa.gov.bt/moa/downloads/downloadFiles/MoADownload4wa6517jw.pdf</a>
Botswana	Administration of Estates Act [Chapter 31:01] 1972	S 3: estates of deceased tribesmen to be administered according to customary law, provided that when a tribesman dies leaving a valid will, this Act shall apply	<a href="http://faolex.fao.org/docs/pdf/bot91334.pdf">http://faolex.fao.org/docs/pdf/bot91334.pdf</a>
Botswana	Control of Livestock Industry Act (Chapter 36:01) 1941	S 3: establishment of a system of Chief's or District Commissioner's permits to authorise the sale or disposal of livestock by a person who is subject to any customary law, to any person other than someone subject to any customary law who lives in the same area S 4: no person shall acquire from a person subject to customary law, any livestock unless they are in possession of a Chief's or District Commissioner's permit authorising the transaction, except that any person subject to customary law may acquire livestock within his own area for his own use or disposal within that area without a permit S 5: no person subject to customary law shall dispose of livestock to a person, other than someone subject to customary law and domiciled in the same area, unless he is in possession of a Chief's or District Commissioner's permit authorising the transaction	<a href="http://faolex.fao.org/docs/pdf/bot65987.pdf">http://faolex.fao.org/docs/pdf/bot65987.pdf</a>

Jurisdiction	Legislation	Scope of provision	Access
Botswana	Customary Law Act 1969 (Chapter 16:01)	<p>S 4: customary law shall be applicable in civil cases where the parties are tribesmen unless - (a) each intended to have intended it to be regulated by common law; (b) the transaction that is the basis of the case is unknown to customary law; (c) the parties consent to common law being applicable</p> <p>S 5: customary law shall be applied where: (a) each party intended the matter to be regulated by customary law or (b) the parties consent to customary law</p> <p>S 7: notwithstanding s 4, customary law applies to inheritance regarding an intestate tribesmen</p> <p>S 9: (1) where the existence or extent of any right or obligation held by a tribesman depends upon customary law, the capacity of the tribesman is governed by customary law; (2) in any other case, the capacity to enter any transaction or enforce or defend any right shall be determined by common law</p> <p>S 10: (1) where there is a dispute as to which system of customary law is applicable - (a) in land matters, it shall be the law of the place where the land is situated, (b) in inheritance proceedings, it shall be the law applying to the deceased, (c) otherwise, it shall be the law which the parties intended should regulate their obligation, or in absence of such, the law of the place where the action arose</p> <p>S 11: if there is doubt as to the existence or content of a rule of customary law, the court may consult reported cases, textbooks and other sources and may receive opinions</p> <p>S 12: the President may declare that any statement of customary law shall be prima facie evidence of the customary law to the extent stated</p>	<a href="http://faolex.fao.org/docs/pdf/bot91329.pdf">http://faolex.fao.org/docs/pdf/bot91329.pdf</a>
Botswana	Tribal Land Act 1968 (Ch 32:02)	<p>S 3: establishment of land boards</p> <p>S 10: all the rights and title to land in each tribal area in the schedule vest in the land board in trust for the benefit of the citizens of Botswana</p> <p>S 13: all the powers previously vested in a Chief and subordinate land authority under customary law shall be vested in a land board, including (a) granting rights to use any land, (b) cancelling rights to use any land, (c) restricting use of tribal land, (d) authorising change of user of tribal land (e) authorising transfer of tribal land</p> <p>S 15: grounds upon which a grant may be cancelled (exclusive list): (a) holder of the grant is no longer eligible to hold land, (b) failure to observe restrictions imposed under 13(1)(d) or the provisions of any law, (c) cancellation is necessary for fair and just distribution of land, (d) land has been used for a purpose not authorised by customary law or holder has contravened any customary law relating to the use, (e) without sufficient excuse, the land has not been cultivated, (f) land is required for public purposes</p> <p>S 17: land board shall determine and define land use zones within the tribal area</p> <p>S 19: may establish subordinate land boards and confer any functions of the land board on them</p> <p>S 33: where land is granted to the State for public purposes and there is a customary form of tenure, the land board shall require the user to vacate subject to (2); (2) user in subs (1) may be granted right to use other land, and shall be entitled to adequate compensation</p>	<a href="http://faolex.fao.org/docs/pdf/bot39051.pdf">http://faolex.fao.org/docs/pdf/bot39051.pdf</a>
Botswana	Tribal Land Act 1968 (Ch 32:02) - Establishment of Subordinate Lands Board Order 1973 (Ch 32:02)	<p>S 2: establishes the Subordinate Land Boards as per the schedule</p> <p>S 4: (1) functions under customary law: includes hearing, grant or refusal of applications to use land for (a) building residences, (b) ploughing to a maximum extent, (c) grazing stock, (d) communal uses; (2) receive and make recommendations to the tribal land board in respect of boreholes; (3) hear and adjudicate disputes concerning customary land grants; (4) receive and make recommendations to the tribal land boards in relation to common law grants of land.</p>	<a href="http://faolex.fao.org/docs/pdf/bot26413.pdf">http://faolex.fao.org/docs/pdf/bot26413.pdf</a>

Jurisdiction	Legislation	Scope of provision	Access
Botswana	Tribal Land Act 1968 (Ch 32:02) - Tribal Land Regulations 1970	Part III: outlines procedures and criteria for decision making relative to customary land rights Reg 8: (1) the land board shall satisfy itself - (a) whether the applicant is a citizen of Botswana; (b) whether the land is subject to rights in favour of any other person; (c) whether the land is available for the use proposed; (d) whether the size and location of the land applied for are appropriate for the proposed use Reg 14A: the land board may cancel grant of customary right to use land if the land has not been developed, without sufficient excuse, within 5 years from date of grant Reg 15: (1) land board shall in no case cancel the grant of customary right to land: (a) without consent of the holder, unless having issued him notice and given at least 35 days to show cause; (b) without having ascertained the opinion of the head of the ward Reg 18: granting of a lease for agricultural or horticultural purposes to a person other than a tribesman Reg 19: granting of common law land rights pursuant to s 24 of the Act. Reg 30: granting of customary rights in accordance with s 33 of the Act.	<a href="http://faolex.fao.org/docs/pdf/bot26411.pdf">http://faolex.fao.org/docs/pdf/bot26411.pdf</a>
Brazil	Decree No. 6.063 implementing Law No. 11.284 of 2006 on public forest sustainable management 2007	This Decree regulates the National Register of Public Forests, the destination of public forests to indigenous communities and environmental licensing for forest resources.	In Portuguese: <a href="http://faolex.fao.org/docs/pdf/bra74668.pdf">http://faolex.fao.org/docs/pdf/bra74668.pdf</a>
Brunei	Land Code 1909 (Ch 40)	S 31: His Majesty in Council may publish rules not inconsistent with the general purposes of the code, including with respect to ... (2)(viii) the occupation and cultivation of state land by natives under temporary licences S 32: provisions on unlawful use of state land shall not interfere with the right of natives to remove timber from state land other than reserved forests, for personal and domestic uses and not for purposes of trade (assumption of use for trade unless otherwise proven)	<a href="http://faolex.fao.org/docs/pdf/bru89607.pdf">http://faolex.fao.org/docs/pdf/bru89607.pdf</a>
Bulgaria	Law for restoration of ownership of forests and forest land entirely 1991	This Law has as its main principle to restore the entire ownership of forests and forest land to pre-nationalisations owners, i.e. former landowners, or their heirs and legal successors, whether they were private individuals, municipalities, or legal persons such as a church or school. According to the Law, land shall be restored in its current status with location, area and boundaries corresponding to the date when it was expropriated (as long as those boundaries still exist, or can be reconstructed). If those boundaries cannot be ascertained there should be compensation in land of equal quality in a different location. The forests will be managed according to the Law of Forests.	In Bulgarian: <a href="http://faolex.fao.org/docs/texts/bul88896.doc">http://faolex.fao.org/docs/texts/bul88896.doc</a>
Cambodia	Land Law 2001	Art 23: definition of indigenous community Art 25: lands of indigenous communities are those where communities have established their residences or carry out traditional agriculture. It includes not only lands actually cultivated but also those reserved for shifting cultivation. Art 26: ownership of immovable properties as in art 25 is granted to indigenous communities as collective ownership, which includes all rights as enjoyed by private owners except the right to dispose of any collective ownership. The exercise of all ownership rights and specific conditions of land use shall be subject to the responsibility of traditional authorities and mechanisms for decision-making, according to their customs, and shall be subject to laws of general enforcement Art 27: for the purpose of facilitating cultural, economic and social evolution of members of indigenous communities and allowing them to freely leave the group, right of individual ownership of an adequate share of land may be transferred to them Art 28: no authority outside the community may acquire rights to immovable property belonging to an indigenous community	<a href="http://faolex.fao.org/docs/texts/cam27478.doc">http://faolex.fao.org/docs/texts/cam27478.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
Cambodia	Law on Forestry 2002	<p>Art 2: the State ensures customary user rights of forest products for local communities</p> <p>Art 10: local communities have customary user rights to collect forest products within Protection Forest with minor impact on the forests</p> <p>Art 15: commissioners have the right to manage harvesting operations within their concession, while ensuring that the operation does not interfere with: (1) customary user rights on land property of registered indigenous community, and (2) customary access and user rights practised by communities residing within or adjacent to forest concessions</p> <p>Art 24: harvesting by members of local communities, at amounts below customary subsistence use (defined in ch 9) shall not require permits</p> <p>Art 37: local communities that traditionally practice shifting cultivation may do so on land the property of indigenous community registered with the state</p> <p>Art 40: traditional user rights of communities living within or near Permanent Forest Reserves shall be ensured for the purpose of traditional customs, beliefs, religions and living. Traditional user rights of a local community shall not require a permit. Traditional user rights consist of: (1) collecting dead wood, wild fruit, honey, resin, and other forest by-products; (2) using timbers to build houses, stables, fences and to make agricultural instruments; (3) grass cutting or grazing livestock; (4) using other forest products consistent with traditional family use; (5) barter or sell forest by-products, if those activities do not cause significant threat to the sustainability of the forest. Traditional user rights are not transferrable. Traditional user rights shall be consistent with natural balance and sustainability of forest resources, rights of other people, and this law</p> <p>Art 41: the Minister may allocate any part of the Permanent Forest Reserve to a community in the area in the form of a Community Forest</p> <p>Art 42: duty of Forestry Administration to study conditions of the Permanent Forest Reserves in order to establish Community Forests by identifying appropriate areas based on the capacity of forest resources and the need to ensure customary user rights of local communities. The Forestry Administration may sign a Community Forest Agreement</p> <p>Art 43: a Community Forest shall be managed in an economic and sustainable manner by the local community, in conformity with the Community Forest Management Plan, and rules and guidelines on Community Forestry. The Forestry Administration shall monitor the implementation and provide technical assistance upon request</p> <p>Art 44: right to harvest within demarcated forest area stated in Community Forest Agreement. The local community cannot sell, barter or transfer its rights to a 3rd party</p> <p>Art 45: the Ministry shall recognise the religious forest of local communities as Protection Forest, serving religious, cultural or conservation purposes. Prohibition on harvesting spirit trees</p> <p>Art 47: granting of incentives for good forest management practices</p> <p>Art 53: the State shall waive royalties and premiums for any forest products collected by local communities under customary user rights or harvested in Community Forest</p>	<a href="http://faolex.fao.org/docs/pdf/cam50411.pdf">http://faolex.fao.org/docs/pdf/cam50411.pdf</a>
Ethiopia	Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation (No. 482/2006).	<p>Preamble: necessary to protect and encourage customary use of genetic resource by Ethiopian communities</p> <p>S 4: (2) this Proclamation shall not apply to: (a) customary use and exchange of genetic resources and community knowledge by and among Ethiopian local communities</p> <p>S 8: (1) local communities have an inalienable right to use or exchange among themselves their genetic resources or community knowledge in accordance with their customary practices or norms; (2) no legal restriction shall be placed on the traditional system on the use and exchange of genetic resources and community knowledge</p> <p>S 10: (1) rights of local communities over genetic resources and community knowledge shall be protected as they are enshrined in the customary practices and norms of the communities; (3) the non-registration of community knowledge shall not render it unprotected by community rights</p> <p>S 17: obligations of access permit holder: (17) respect the cultural practices, traditional values and customs of local communities</p> <p>S 25: obligations of exploration permit holder: (5) respect local customs, traditions, values, property rights</p>	<a href="http://faolex.fao.org/docs/pdf/eth80475.pdf">http://faolex.fao.org/docs/pdf/eth80475.pdf</a>

Jurisdiction	Legislation	Scope of provision	Access
Ethiopia	Civil Code 1960	Art 3347: (1) Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed.	Unable to find internet access
Ethiopia	Criminal Code 2004	Chapter III is entitled 'Crimes committed against life, person and health through harmful traditional practices'. It contains the following offences: Art 561: Endangering the lives of pregnant women and children through harmful traditional practices. Art 562: Causing bodily injury to pregnant women and children through harmful traditional practices. Art 564: Violence against a marriage partner or person cohabiting in an irregular union. Art 565: Female circumcision. Art 566: Infibulation of the female genitalia. Art 567: Bodily injuries caused through other harmful traditional practices. Art 568: Transmission of disease through harmful traditional practices. Art 569: Participation in harmful traditional practices. Art 570: Incitement against the enforcement of provisions prohibiting harmful traditional practices. See also: Art 578: (1) Whoever takes part in a duel, that is to say in an armed combat involving deadly weapons regulated in advance by tradition or custom, such as to endanger the life, person or health of the participants, is punishable, whether or not bodily injury has been sustained, with simple imprisonment or fine. Art 651: The preceding Article [bigamy] shall not apply where bigamy is committed in conformity with religious or traditional practices recognized by law.	<a href="http://www.lexadin.nl/wlg/legis/nofr/oeur/arch/eth/TheRevisedCriminalCode.pdf">http://www.lexadin.nl/wlg/legis/nofr/oeur/arch/eth/TheRevisedCriminalCode.pdf</a>
Gambia	Lands (Provinces) Act 1995 (Cap. 103)	Preamble: expedient that existing customary rights of indigenous inhabitants to use and enjoy the land and natural fruits thereof should be preserved S 5: the occupation and use of Provinces' land by indigenes shall be governed by customary laws in the localities in which such lands are situated, provided that where it is expedient to do so, a lease may be granted to an indigene in accordance with the provisions hereinafter contained to the grant of leases to non-indigenes S 27: where any land required for public purpose is not under lease but it is necessary to remove persons in customary occupation thereof, the Minister shall pay rent and such compensation as may be agreed upon or determined	<a href="http://faolex.fao.org/docs/pdf/gam41087.pdf">http://faolex.fao.org/docs/pdf/gam41087.pdf</a>

Jurisdiction	Legislation	Scope of provision	Access
Ghana	Chieftancy Act 2008 (Act No. 759)	<p>S 1: establishes National House of Chiefs</p> <p>S 3: (1) the National House shall- (a) advise any person on any matter relating to chieftancy, (b) undertake progressive study, interpretation and codification of customary law with a view to evolving a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin (c) undertake evaluation of traditional custom and usage with a view to eliminating such that is outmoded and socially harmful</p> <p>S 6: establishes Regional Houses of Chiefs</p> <p>S 9: (2) each Regional House shall- (a) advise any person on any matter relating to chieftancy in the region, (b) study and make general recommendations for the resolution of chieftancy disputes in the region, (c) undertake the compilation of customary laws and lines of succession applicable to each stool or skin</p> <p>S 12: establishes Traditional Council in each traditional area</p> <p>S 17: establishes in each traditional area the Divisional Councils that the Regional House may determine</p> <p>Ss 22-30: jurisdiction of the National House of Chiefs, Regional Houses of Chiefs, and Traditional Councils</p> <p>S 44: stool property consists of: (a) the stool itself and all insignia, (b) any other property declared as stool property to the chief on installation and (c) any property acquired as stool property or with stool resources after installation of the chief</p> <p>S 45: a transaction purporting to alienate or pledge stool property is voidable unless made with the consent of the Traditional Council</p> <p>S 49: the National House shall undertake progressive study, interpretation and codification of customary law with a view to evolving a unified system of rules of customary law</p> <p>S 50: where a Traditional Council determines that the customary law in its area is uncertain or considers it desirable that it should be modified or assimilated with common law, the Council shall make a representation to the House of Chiefs in the region</p> <p>S 51: (1) a Regional House may draft a declaration of what the customary rule in force after receiving representations from a Traditional Council or on its own initiative or if requested by the National House (with provisions on procedure)</p> <p>S 52: (1) A Regional House may draft a statement of alterations it thinks desirable in any customary law rule in force (with provisions on procedure)</p> <p>S 54: (1) the National House may consider whether a rule of customary law should be assimilated by the common law (with provisions on procedure)</p> <p>S 55: (1) where a rule is declared to be assimilated under s 54, it may be referred to as common law rule of customary origin, (2) a common law rule of customary origin shall apply to each issue within its scope, whether or not that issue would have been determined according to common law or customary law if assimilation had not taken place</p> <p>Ss 57-63: provisions on chiefs</p>	<a href="http://faolex.fao.org/docs/pdf/gha83760.pdf">http://faolex.fao.org/docs/pdf/gha83760.pdf</a>
Ghana	Conveyancing Decree 1973 (NRCD 175)	<p>S 3: (1) requirements relating to writing do not apply to any transfer of an interest in land which takes effect: (h) by oral grant under customary law</p> <p>S 4: an oral grant of land under customary law shall be recorded (with further details on requirements of record)</p> <p>S 7: (1) customary transfers shall be of no effect unless recorded; (2) District Court must authorise execution of a record where the transferor, without lawful excuse, refuses to do so</p>	<a href="http://faolex.fao.org/docs/pdf/gha86269.pdf">http://faolex.fao.org/docs/pdf/gha86269.pdf</a>
Ghana	Farm Lands (Protection) Act 1962 (Act 107 of 1962)	S 2: (1) confers valid title on a farmer who, between 1940 and commencement of this Act, acquired land by customary law in a prescribed area for purposes of farming and commenced farming within 8 years of acquisition, provided it has not been farmed by someone else for 8 years prior to the acquisition	<a href="http://faolex.fao.org/docs/pdf/gha3109.pdf">http://faolex.fao.org/docs/pdf/gha3109.pdf</a>

Jurisdiction	Legislation	Scope of provision	Access
Ghana	Land Title Registration Act 1986	<p>S 19.1: (1) person shall be registered as proprietor of land if, in relation to that land, that person: (a) is the allodial owner (holds it under customary law where not under a restriction on the rights of the user); (b) holds a customary law freehold (rights of a user subject to restrictions imposed on a subject of a stool who has taken the land under customary law); (e) holds a lesser interest in land (any other customary tenancy arrangement)</p> <p>S 46: (1) unless otherwise recorded in the land register, an interest in land is subject to: (a) the rights of way, rights of water, profits or rights customarily exercised which are not recognised interests under customary law subsisting at time of first registration; (b) customary rights subsisting at the time of first registration; (f) rights, whether acquired by customary law or otherwise, of a person in occupation of the land</p> <p>S 93: rules on execution of instruments: (f) stool: executed by individuals whose consent is by customary law necessary; (g) in the case of a skin administered by another person, executed by that person on behalf of the skin</p> <p>S 110: (1) (a) where an interest in land is vested in a stool or family, they shall be registered as proprietor of such; (b) where an interest in land vested in a skin is administered by any other person, the skin shall be registered as proprietor of such and an entry shall be made showing the person who administers it; (2) the occupant of a stool or holder of a skin may enter a caveat or apply for an order restricting a transaction in the same manner as the occupant would be entitled to were the land registered in the individual name of the occupant</p> <p>S 139: 'lease' includes sublease or any other tenancy whether granted under customary law or otherwise; 'stool land' includes land or an interest in such controlled by a Stool or the head of a particular community for the benefit of the subjects of that Stool</p>	<a href="http://www.epa.gov.gh/gahanalex/acts/Acts/LAND%20TITLE%20REGISTRATION%20ACT,1986.pdf">http://www.epa.gov.gh/gahanalex/acts/Acts/LAND%20TITLE%20REGISTRATION%20ACT,1986.pdf</a>
Indonesia	Law No. 41/1999 on Forestry	<p>Art 1: 'adat' forest means state forests located in the traditional jurisdiction areas</p> <p>Art 4: (3) forest control by the state shall respect customary laws, as long as it exists and does not contradict national interests</p> <p>Art 5: (2) state forest can be in the form of 'adat' forest. (a) adat forest shall be determined as long as it exists in reality; (b) if during its development, concerned customary communities are no longer existing, the management right of those adat forests shall be returned to government</p> <p>Art 17: (2) establishment of forest management area shall be implemented by taking into account... local community institutions, including customary laws</p> <p>Art 37: (1) utilisation of adat forest shall be undertaken by concerned customary communities in accordance with the forest's functions; (2) utilisation of adat forest with protection and conservation functions shall be undertaken as long as it does not disturb those functions</p> <p>Art 67: (1) customary law community, as long as it exists, shall have rights to: (a) collect forest products for daily needs; (b) undertake forest management in accordance with customary laws that is not contradicting the laws; and (c) be empowered for improving their welfare</p>	<a href="http://www.dephut.go.id/INFORMASI/UNDANG2/uu/Law_4199.htm">http://www.dephut.go.id/INFORMASI/UNDANG2/uu/Law_4199.htm</a>
Indonesia	Law No. 5/1960 on the Basic Regulation of Agrarian Affairs	<p>Preamble: considering - (c) that agrarian law is dualistic in nature, given that adat (customary) law is also effective in addition to the former, which is based on western law</p> <p>Art 5: the agrarian law is adat law as far as it is not in conflict with the national and state interests, the regulations of this Act, other legislative regulations</p> <p>Art 22: the creation of a hak milik according to adat law is to be regulated in Government Regulation</p> <p>Art 26: (1) the transfer of a hak milik under adat and the control of such acts are to be regulated by Government Regulation</p> <p>Art 50: (1) provisions concerning hak milik (right of ownership) are to be regulated by way of an Act; (2) provisions concerning hak guna-usaha (right to cultivate), hak guna-bangunan (right of use of structures), hak pakai (right of use), and hak sewa untuk bangunan (right of lease of land for structures) are to be regulated by legislation</p> <p>Art 56: as long an Act in relation to hak milik has not be established, local adat law provisions apply, provided that they do not contradict this Act</p>	<a href="http://www.eastimorlawjournal.org/LEGALRESEARCH/UUPA_English.DOC">http://www.eastimorlawjournal.org/LEGALRESEARCH/UUPA_English.DOC</a>
Indonesia	Law No. 7/2004 on Water Resources	<p>Art 6: (1) water resources are controlled by the state; (2) maintains recognition of local traditional communal rights, so long as they are not contradictory to national interests and legislative regulations; (3) traditional communal rights on water resources will be recognised so long as they actually exist and have been confirmed with local regional regulations</p>	<a href="http://faolex.fao.org/docs/texts/ins48775.doc">http://faolex.fao.org/docs/texts/ins48775.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
Indonesia	<p>Regulation of State Minister of Agrarian Affairs/Head of the National Land Agency No. 5/1999</p> <p>Re: A guideline for the settlement of problems related to the communal reserved land of the customary-law-abiding community</p>	<p>Preamble: considering- (a) national land laws recognise the presence of the communal reserved land title and the like belonging to the customary-law-abiding community; (b) there are still many regional plots of land of which the settlement, control and use are based on local customary laws and are recognised by the members of the customary-law-abiding community as their communal reserved land</p> <p>Art 1: (1) communal reserved land title which belong to the customary-law-abiding community shall be an authority which, pursuant to the customary law, rests with a particular customary-law-abiding community over a particular region constituting a living environment of its members, and which they can exercise to take benefits from the natural resources for the continuity of their lives inasmuch as such authority arises from an uninterrupted physical and spiritual relationship from generation to generation between the customary-law-abiding community and the region concerned. (2) Communal reserved land shall be a plot of land over which there is a communal reserved land title belonging to a particular customary-law-abiding community; (3) A customary-law-abiding community shall be a group of people bound by their customary law system as communal members of a legal union because of a common dwelling place or on the basis of lineage</p> <p>Art 2: (1) the communal reserved land title, as long as it exists, shall be exercised by the customary-law-abiding community pursuant to the local customary law; (2) the communal reserved land title shall be considered as being still in existence if: (a) there is a group of people who still feel bound by their customary law system as members of a particular legal union and apply the provisions in their daily lives, (b) there is a plot of communal reserved land which constitutes the living environment of the member of the legal union and the place where they take their daily necessities, and (c) there is a customary law system about the settlement, control and use of the communal reserved land, which still prevails.</p> <p>Art 3: exercise of communal reserved land title as in art 2 can no longer apply to land which: (a) is already possessed by persons by virtue of a land title pursuant to the Law on Agrarian Principles, (b) constitutes land already acquired by Government institutions, legal entities or person pursuant to prevailing procedure</p> <p>Art 4: (1) control over communal reserved land may be conducted: (a) by members of the customary-law-abiding community, (b) by government agencies, legal entities or individuals who are not members of such community concerned on the basis of the State granting the title after the land has been given up by the community pursuant to the provisions of customary law;</p> <p>Art 5: (1) determination of whether their communal reserved land title still exists shall be conducted by a regional administration by involving customary law experts, the customary-law-abiding community, NGOs and government agencies</p>	<p><a href="http://faolex.fao.org/docs/pdf/ins36559.pdf">http://faolex.fao.org/docs/pdf/ins36559.pdf</a></p>
Kenya	<p>Land Adjudication Act (Cap. 284)</p>	<p>S 2: 'group' means tribe, clan, section, family or other group of persons, whose land under customary law belongs communally to the persons who are members of the group, together with any person of whose land the group is determined to be the owner under s 23(2)(a)</p> <p>S 20: the committee appointed for an adjudication shall: (a) decide in accordance with recognised customary law and question referred to it by the demarcation officer, (b) advise the adjudication officer upon any question of recognised customary law</p> <p>S 23: (2)(a) if satisfied that a person has, under recognised customary law, exercised rights over land which should be recognised as ownership, the recording officer shall determine the person to be owner (subject to provisions on land adjoining that groups); (b) the same as subs (a) in relation to groups... (e) if satisfied that any person or group is entitled to any interest in land not amounting to ownership, whether by virtue of recognised customary law or otherwise, the recording officer shall determine the nature, incidents and extent of the right to enable it to be recorded</p>	<p><a href="http://faolex.fao.org/docs/texts/ken62433.doc">http://faolex.fao.org/docs/texts/ken62433.doc</a></p>



Jurisdiction	Legislation	Scope of provision	Access
Kenya	Land Consolidation Act 1958	<p>S 8: (1) no person shall institute proceedings in which the ownership or existence under native law and custom of any right or interest in land in an adjudication area is called in question or alleged to be in dispute unless the written consent of the Adjudication Officer has been given</p> <p>S 11: (1) the Committee appointed for an adjudication section shall determine in accordance with customary law the claim of any individual to any right or interest in land within the adjudication section</p> <p>S 15: (2)(b) the Committee shall enter in the Record of Existing Rights any interest, lease, right of occupation or other encumbrance affecting the land, whether by virtue of African customary law or otherwise</p> <p>S 29: (2) if any recording of rights and interests in land in the special areas has been carried out in accordance with native law and custom and any necessary demarcation has been carried out, if such has been done in accordance with the principles of this Part, it may be deemed to be an Adjudication Record for the purposes of this Part</p>	<a href="http://faolex.fao.org/docs/texts/ken62975.doc">http://faolex.fao.org/docs/texts/ken62975.doc</a>
Lao PDR	Customary Rights and the Use of Forest Resources Order	<p>Art 2: customary or traditional rights are those rights and obligations held by an individual, group, or community which have their root in custom. Different than laws in their origin and generally not written, customary rights are nonetheless true rights that exist on their own merit. Thus they have the force of law according to the law and legal doctrine of most if not all States.</p> <p>Art 3: custom is the result of practices and usages which have the following characteristics: - constant and regular being repeated time and again, - old (at least one generation of 20 years), - general, widespread within the group or community, - seen by the individual, group, or community as creating rights and obligations among themselves</p> <p>Art 4: customary rights regarding the use of forest land and forest products are to be exercised freely by their holder within the bounds set by custom. Limitations on their exercise should be kept to the minimum necessary</p> <p>Art 5: customary transfer is permitted within community only</p> <p>Art 6: limitation or removal of customary right</p> <p>Art 7: conditions for limitation or removal of customary rights by law</p> <p>Art 8: compensation in all cases</p> <p>Art 9: non-limiting list of customary rights and forest resources</p> <p>Part II: the Land and Forest Land Distribution Committee</p> <p>Part III: dispute settlement</p>	<a href="http://faolex.fao.org/docs/pdf/lao6293.pdf">http://faolex.fao.org/docs/pdf/lao6293.pdf</a>
Lao PDR	Forestry Law 2007	<p>Art 35: planting of trees and NTFPs in Protection Forest and Conservation Forest areas is not allowed with the exception of customary use in the management utilisation zones</p> <p>Art 39: utilisation of forests is classified into 4 categories, including customary utilisation. Utilisation of all categories of forest shall avoid causing any negative impacts to forest areas, nature, the environment and society</p> <p>Art 42: Customary utilisation is the use of forest and forest products that has been practiced for a long time in accordance with laws and regulations. The State allows the use of timber and harvest of forest products in non-prohibited forests for household utilisation without adverse impact on forest resources, the environment, and reflecting the rights and interest of individuals or organisations. Customary utilisation of forest and forest products shall be practiced in accordance with a designed plan and with village regulations and laws and regulations on forests.</p> <p>Art 108: the Village Forestry Unit must study and propose that the village administration authority to issue regulations on customary use of village forests</p>	<a href="http://faolex.fao.org/docs/pdf/lao89474.pdf">http://faolex.fao.org/docs/pdf/lao89474.pdf</a>
Lesotho	Land Act, 1979 (Act No. 17 of 1979)	<p>S 3: (2) no person, other than the State, shall hold any title to land except as provided for under customary law or this Act; (3) where customary law is inconsistent with this Act, this Act shall prevail</p> <p>Sch 3 (application for an allocation of Land in a Rural Area): (4) I understand that if the allocation is granted for traditional or agricultural purposes, it allows me and my immediate family to use and occupy the land and that on my death my spouse receives the right to continue to use and occupy the land until they die and after their death the interest will pass to my surviving heirs;</p>	<a href="http://faolex.fao.org/docs/texts/les18328.doc">http://faolex.fao.org/docs/texts/les18328.doc</a>
Malawi	Environmental Management Act 1996	S 35: (2) Minister may take action as necessary for: (f) identifying, promoting and integrating traditional knowledge into the conservation and sustainable use of biological diversity	<a href="http://faolex.fao.org/docs/pdf/mlw13233.pdf">http://faolex.fao.org/docs/pdf/mlw13233.pdf</a>

Jurisdiction	Legislation	Scope of provision	Access
Malawi	Forestry Act 1997	S 2: 'customary land' has the meaning assigned in the Land Act; 'village forest area' means an area of customary land established as such by an agreement under s 30 S 3: purposes of the Act: (b) augment, protect and manage trees and forest on customary land in order to meet needs of local communities and for conservation of soil and water S 29: the purpose of this part is to provide for promotion of participatory forestry on customary land through protection, control and management of trees and forests by the people on customary land... S 30: a village headman may demarcate unallocated customary land as a village forest S 32: (1) Minister may make rules which apply to all customary land outside forest reserves; (2) such rules may: (g) prescribe a mechanism for sharing costs and benefits between the Department of Forestry and village natural resources management committees in regard to forest produce confiscated from customary land S 50: (1) a resident of any village may collect forest produce from customary land other than village forest areas for domestic use; (3) where wood from activities on customary land is in excess of domestic needs, the excess shall be disposed of by the village natural resources management committee for the benefit of that community	<a href="http://faolex.fao.org/docs/pdf/mlw10025.pdf">http://faolex.fao.org/docs/pdf/mlw10025.pdf</a>
Malaysia	Land Acquisition Act 1960	S 2: 'land' means alienated land within the meaning of the State land law, land occupied under customary right and land occupied in expectation of title	<a href="http://www.agc.gov.my/agc/Akta/Vol.%2010/Act%20486.pdf">http://www.agc.gov.my/agc/Akta/Vol.%2010/Act%20486.pdf</a>
Malaysia	Wildlife Conservation Enactment 1997	S 9: (2) a proposal for an area to be declared a Wildlife Sanctuary shall include: (c) particulars of native or traditional rights that will continue to be exercisable after the declaration of the proposed Sanctuary S 20: (1) subject to this enactment, native or traditional rights specified in a proposal may continue to be exercised in the Sanctuary, except where they cease to be exercisable in return for compensation under an agreement S 64: (2) as in s 9(2) but in relation to Wildlife Hunting Areas S 75: (1) as in s 20(1) but in relation to Wildlife Hunting Areas S 87: (1) Director may declare an area as a turtle egg traditional collection area; (2) such an area shall be reserved exclusively for collection of turtle eggs without a permit in accordance with traditional rights of the people who dwell reasonably adjacent to such area and whose rights have been recognised; (3) rights do not extend to rights to sell any turtle egg	<a href="http://www.internationalwildlifelaw.org/Malaysia.html">http://www.internationalwildlifelaw.org/Malaysia.html</a>
Marshall Islands	Customary Law and Language Commission Act 2004	S 102: (1) establishes Customary Law and Language Commission S 103: (1) further detail on the function of the Commission to codify the customary law, (2) duty of Commission to reduce to writing all material collected by it and to codify the law S 104: President may publish a Customary Law Code S 105: (1) further detail on the duty of the Commission to promote and preserve the Marshallese language	<a href="http://faolex.fao.org/docs/pdf/mas64862.pdf">http://faolex.fao.org/docs/pdf/mas64862.pdf</a>
Marshall Islands	Land Lease Commission Act 1993	S 403: (3) As far as practicable, the persons appointed to the Land Lease Commission shall be persons with wide experience and knowledge in customary law and traditional practice, and may include members of the Customary Law Commission S 404: (1) function of the Commission includes to review all leases and ensure that: (a) the rights of relevant interest holders under customary law are safeguarded in accordance with customary law and traditional practices, (b) the names of interest holders under customary law are included in the body of the lease	<a href="http://faolex.fao.org/docs/html/mas49744.htm">http://faolex.fao.org/docs/html/mas49744.htm</a>
Micronesia	Chapter 8 of Title 2 of the Pohnpei State Code - Marine Areas 2006	S 8-101: (1) the law established during the Japanese administration applies, with the following exceptions: (a) rights in fish weirs or traps and associated rights recognised by local customary law are re-established; (b) the right of the owner of abutting land to claim all materials deposited on the shore and such fishing rights, in waters shallower than 4m above a reef, as were recognised by local customary law are hereby re-established where they are not in conflict with the rights of the government as owner of all marine areas; (d) the extent of the rights in (a), (b) and (c) shall be governed by the local customary law in effect at the time it was abolished; (e) nothing in above paragraphs limits traditional and customary right of the individual land owner, clan, family or local government to control the use of marine areas below the ordinary high water mark, subject only to the rights of the government as owner of such	<a href="http://faolex.fao.org/docs/texts/mic79810.doc">http://faolex.fao.org/docs/texts/mic79810.doc</a>
Micronesia - Chuuk	Chapter 1 of Title 57 of the Trust Territory Code - General Provisions	S 2: exactly the same as above provisions from Chapter 8 of Title 2 of the Pohnpei State Code - Marine Areas 2006	<a href="http://faolex.fao.org/docs/texts/mic78970.doc">http://faolex.fao.org/docs/texts/mic78970.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
Micronesia - Yap	Yap Constitution	Art III, S 1: due recognition shall be given to the Dalip pi Nguchol and their traditional and customary roles Art III, S 3: due recognition shall be given to traditions and customs in providing a system of law, and nothing in this Constitution shall be construed to limit or invalidate any recognised tradition or custom Art XIII, S 3: title to land may be acquired only in a manner consistent with traditions and customs Art XIII, S 5: recognition of traditional rights and ownership of natural resources within the marine space. No action may be taken to impair these traditional rights and ownership, except that the State Government may provide for the conservation and protection of natural resources	<a href="http://www.fsmlaw.org/ya/p/constitution/index.htm">http://www.fsmlaw.org/ya/p/constitution/index.htm</a>
Mozambique	Environmental Act 1997	Art 4: Fundamental principles: (2) recognition and valorisation of the traditions and knowledge of local communities that contribute to the conservation and preservation of natural resources and the environment	<a href="http://faolex.fao.org/docs/texts/moz65620.doc">http://faolex.fao.org/docs/texts/moz65620.doc</a>
Mozambique	Land Law 1997	Art 12: the right of land use and benefit is acquired by: (a) occupancy in accordance with customary norms and practices which do not contradict the Constitution Art 24: (2) in the management of natural resources and resolution of conflict, local communities shall use customary norms and practices	<a href="http://www.doingbusiness.org/Documents/LawLibrary/Mozambique-Land-Law-Legislation.pdf">http://www.doingbusiness.org/Documents/LawLibrary/Mozambique-Land-Law-Legislation.pdf</a>
Namibia	Communal Land Reform Act 2002	S 1: 'customary land right' means any of the rights referred to in s 21(a), (b), (c) S 3: functions of a board are: (a) to exercise control over the allocation and cancellation of customary land rights by Chiefs or Traditional Authorities; (c) establish and maintain a register for the allocation, transfer and cancellation of customary land rights S 19: rights that may be allocated in respect of communal land: (a) customary land rights Chapter IV, Part 1 - Customary land rights and grazing right. See particularly: S 20: primary power to allocate or cancel any customary land right vests (a) in the Chief, or (b) where the Chief so determines, in the Traditional Authority. S 21: customary land rights which may be allocated: (a) right to a farming unit; (b) right to a residential unit; (c) any other form of customary tenure that may be recognised by the Minister	<a href="http://www.lac.org.na/laws/pdf/communallandrefor mact.pdf">http://www.lac.org.na/laws/pdf/communallandrefor mact.pdf</a>
Namibia	Council of Traditional Leaders Act 1997	S 2: establishes a Council of Traditional Leaders in order to advise the President on the control and utilization of communal land and all such other matters as may be referred to it by the President	<a href="http://www.nid.org.na/pub_docs/traditional_autho .pdf">http://www.nid.org.na/pub_docs/traditional_autho .pdf</a>
Namibia	Forest Act 2001	S 15: (1) Minister may, with the consent of the Chief of Traditional Authority, enter into a written agreement with any body who represents the interests of persons who have the right over communal land and is willing to manage the communal land as a community forest S 33: (1) subject to the customary law applicable, the inhabitant of communal law may cut, take and remove forest produce for use as household fuel, construction of a shelter or for livestock of construction of structures to protect agricultural crops	<a href="http://faolex.fao.org/docs/pdf/nam46518.pdf">http://faolex.fao.org/docs/pdf/nam46518.pdf</a>
Namibia	Traditional Authorities Act 2000 (No. 25 of 2000)	S 1: 'communal area' means the geographic area habitually inhabited by a specific traditional community; 'customary law' means the customary law, norms, rules of procedure, traditions and usages of a traditional community in so far as they do not conflict with the Constitution or any other written law S 2: (1) every traditional community may establish a traditional authority consisting for a chief or head, senior traditional councillors and traditional councillors. S 3: (1) subject to s 16, the functions of a traditional authority shall be to promote peace and welfare and ensure the observance of the customary law (plus list of particular functions, including to ascertain and administer the customary law); (3) traditional authority may hear and settle disputes in accordance with customary law and make customary law. S 4: designation of chief or head of traditional community S 7: chief or head of community - (a) shall be the custodian of customary law, (d) shall perform such powers and exercise duties and functions as may be conferred upon them by statutory law or customary aw	<a href="http://faolex.fao.org/docs/pdf/nam66435.pdf">http://faolex.fao.org/docs/pdf/nam66435.pdf</a>
Nauru	Custom and Adopted Laws Act 1971 (No. 11 of 1971)	S 3: (1) the institutions, customs and usages of the Nauruans to the extent they existed immediately before this Act shall, save in so far as they may be expressly or by necessary implication abolished or altered by any Act, be accorded recognition by every Court and have full force of law to regulate the following matters - (a) title to and interest in land, (b) rights to dispose of property, (c) succession to estates in the case of intestacy, (d) any matters affecting Nauruans only	<a href="http://faolex.fao.org/docs/texts/nau74457.doc">http://faolex.fao.org/docs/texts/nau74457.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
New Zealand	Conservation Act 1987	S 2: 'Manawhenua' means customary authority exercised by an iwi or hapu or individual in an identified area S 27A: (1)(a) if satisfied that any Maori land or land held under a Crown lease by Maori should be managed for conservation purposes, the Minister may agree with the owner or lessee for a Nga Whenua Rahui kawenata to provide for the management of the land; (b) the parties to a Nga Whenua Rahui kawenata shall review it not less than every 25 years to consider its objectives, conditions and continuance and such review shall have regard to the manawhenua of the owner or lessee. The owner or lessee may terminate upon giving such notice as may be agreed (not less than 6 months)	<a href="http://faolex.fao.org/docs/texts/nze11968.doc">http://faolex.fao.org/docs/texts/nze11968.doc</a>
New Zealand	Fisheries Act 1996	S 2: kaitiakitanga means the exercise of guardianship, and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Maori; mana whenua means customary authority exercised by an iwi or hapu in an identified area; tangata whenua means the hapu or iwi that is Maori and holds mana whenua over that area; tikanga Maori means Maori customary values and practices Ss 12, 25, 186A, 186B: before taking certain actions, the Minister shall provide for the input of tangata whenua and have particular regard to kaitiakitanga S 21: (1) in setting or varying any total allowable commercial catch, the Minister shall have regard to the total allowable catch and shall allow for - (a)(i) Maori customary non-commercial fishing interests S 89: (2) permit requirement does not apply to the taking of (b) fish, aquatic life, or seaweed by a natural person otherwise than for the purpose of sale and in accordance with any Maori customary non-commercial fishing regulations S 89B: permit requirement does not apply if (a) the fish etc is taken from a site at which fish farming is being undertaken under a customary rights order under the Foreshore and Seabed Act 2004, and (b) the fish etc has been lawfully acquired and transferred to that site in accordance with the customary rights order S 174: the object of ss 175-185 is to make better provision for the recognition of rangatiratanga and of the right secured by the Article the Second of the Treaty of Waitangi for waters that have customarily been of special significance to any iwi or hapu as a source of food or for spiritual or cultural reasons S 175: Governor General may declare an area to be a taiapure-local fishery S 177: procedure for proposing an area be declared a taiapure-local fishery S 184: the Minister shall appoint a committee of management for each taiapure-local fishery S 185: (1) committee of management may recommend to the Minister the making of regulations under ss 186, 297 or 298; (5) no regulations under subs (1) shall provide for any person to be refused access to or use of any taiapure-local fishery because of the colour, race or ethnic origins of that person S 186: (1) the Governor-General may make regulations recognising and providing for customary food gathering by Maori to the extent that such food gathering is neither commercial nor for pecuniary gain or trade, (2) such regulations may: (b) empower any part of NZ fisheries water to be declared a mataitai reserve, (c) include general restrictions and prohibitions in respect of taking of fish etc, (d) empower any Maori Committee to make bylaws restricting or prohibiting the taking of fish etc	<a href="http://faolex.fao.org/docs/texts/nze11669.doc">http://faolex.fao.org/docs/texts/nze11669.doc</a> AND <a href="http://faolex.fao.org/docs/texts/nze11669-SCH.doc">http://faolex.fao.org/docs/texts/nze11669-SCH.doc</a>
New Zealand	Forests Act 1949	S 64: (5) notwithstanding anything in the Te Ture Whenua Maori (Maori Land) Act 1993, the owners of Maori land may pass a resolution appointing the Minister as their agent S 67A: list of land to which this Part does not apply (including indigenous timber from planted indigenous forest etc) S 67B: the purpose of this Part is to promote the sustainable forest management of indigenous forest land S 67C: (1) prohibition on exporting indigenous timber (with list of exceptions) S 67D: (1) prohibition on milling any indigenous timber unless requirements of section complied with S 67E: Secretary may approve sustainable forest management plans under s 67F (ss 67F-67I: procedural matters relating to sustainable forest management plans; s 67J: matters to be incorporated in sustainable forest management plans; s 67K: sustainable forest management plan to be recorded against title) S 67M: (1) any owner of landholding that is not subject to a registered sustainable forest management plan may apply to the Secretary for a sustainable forest management permit to allow harvesting and milling of timber	<a href="http://faolex.fao.org/docs/texts/nze3311.doc">http://faolex.fao.org/docs/texts/nze3311.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
New Zealand	Maori Reserved Land Act 1955	<p>S 3: (2) the lands in the first column of Sch 1 shall become Maori reserves; (3) all land subject to the West Coast Settlement Reserves Act 1892 shall become settlement reserves; (4) all lands subject to the Maori Townships Act 1910 shall become township lands; (5) all land acquired by the Maori Trustee pursuant to s 8 of this Act shall be reserved land; (6) all land which is subject to this Act shall be deemed to be reserved land and vest in the Maori Trustee for legal estate in fee simple</p> <p>S 4: the Governor-General may declare any land vested in the Maori Trustee to be a Maori reserve and may declare the trusts upon which any such Maori reserve shall be administered</p> <p>S 5: all reserved land shall be held by the Maori Trustee in trust for the owners beneficially entitled thereto</p> <p>S 7: all reserved land shall be deemed to be Maori freehold land</p> <p>S 8: (1) power of Maori Trustee to do all such things as he considers necessary for the due administration of reserved land and which are in the interests of the beneficiaries; (2) list of specific powers (non-exclusive)</p> <p>S 9: (1) except as otherwise provided in this Act, the Maori Trustee has no power to sell reserved land</p> <p>S 10: list of ways in which equitable holder of freehold interest in reserved land may deal with such interest</p> <p>S 11: (1) the Maori Land Court may determine persons beneficially entitled to reserved land and define their relative interests therein; (2) in determining such applications, the Court shall proceed as if it were determining an application for investigation of title to Maori customary land pursuant to the provisions of Part 6 of Te Ture Whenua Maori (Maori Land) Act 1993</p> <p>S 14: (1) the Court may vest in the beneficial owners of any reserved land which is no longer required to be administered by the Maori Trustee</p> <p>Part 2: succession to and disposal of beneficial interests in reserved land</p> <p>Part 3: leases of Maori reserves and township land</p> <p>Part 4: leases of settlement reserves</p>	<a href="http://faolex.fao.org/docs/texts/nze12592.doc">http://faolex.fao.org/docs/texts/nze12592.doc</a>
New Zealand	Resource Management Act 1991	<p>S 33: (1) A local authority may transfer any 1 or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority in accordance with this section. (2) For the purposes of this section, public authority includes – ... (b) an iwi authority... (4) A local authority shall not transfer any of its functions, powers, or duties under this section unless – (a) it has used the special consultative procedure set out in section 83 of the Local Government Act 2002; and (b) before using that special consultative procedure it serves notice on the Minister of its proposal to transfer the function, power, or duty; and (c) both authorities agree that the transfer is desirable on all of the following grounds: (i) the authority to which the transfer is made represents the appropriate community of interest relating to the exercise or performance of the function, power, or duty; (ii) efficiency; (iii) technical or special capability or expertise... (6) A transfer of functions, powers, or duties under this section shall be made by agreement between the authorities concerned and on such terms and conditions as are agreed. (7) A public authority to which any function, power, or duty is transferred under this section may accept such transfer, unless expressly forbidden to do so by the terms of any Act by or under which it is constituted; and upon any such transfer, its functions, powers, and duties shall be deemed to be extended in such manner as may be necessary to enable it to undertake, exercise, and perform the function, power, or duty. (8) A local authority which has transferred any function, power, or duty under this section may change or revoke the transfer at any time by notice to the transferee. (9) A public authority to which any function, power, or duty has been transferred under this section, may relinquish the transfer in accordance with the transfer agreement.</p>	<a href="http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html">http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html</a>

Jurisdiction	Legislation	Scope of provision	Access
New Zealand	Te Ture Whenua Maori (Maori Land) Act 1993	Part 1: continuation of the Maori Land Court Part 2: continuation of the Maori Appellate Court Part 4: administration of estates Part 5: recording of ownership Part 6: status of land Part 7: alienation of Maori land Part 8: duties and powers of court in relation to alienations of Maori freehold land Part 9: powers of assembled owners Part 10: representation of owners of Maori lands Part 11: leases Part 12: trusts Part 13: Maori incorporations Part 14: title reconstruction and improvement Part 17: Maori reservations	<a href="http://www.legislation.govt.nz/act/public/1993/0004/latest/whole.html?search=ts_act_climate+change_reset#d1m289897">http://www.legislation.govt.nz/act/public/1993/0004/latest/whole.html?search=ts_act_climate+change_reset#d1m289897</a>
New Zealand	Treaty of Waitangi (Fisheries Claims) Settlement Act (No. 121 of 1992)	S 9: (a) all claims by Maori in respect of commercial fishing (i) whether founded on common law (including customary law and aboriginal title), the Treaty of Waitangi, etc; and (ii) whether in respect of any fisheries, including any commercial aspect of traditional fishing; and (iii) whether or not such claims have been adjudicated by the courts or recommendation from the Waitangi Tribunal, having been acknowledged, are hereby finally settled; and (b) the obligations of the Crown to Maori in respect of commercial fishing are hereby fulfilled, and no court or tribunal shall have jurisdiction to inquire the existence or quantification of such rights and interests; and (c) all claims in respect of rights and interests of Maori in commercial fishing are hereby finally settled S 10: all claims by Maori in respect of non-commercial fishing for species subject to the Fisheries Act 1983 (a) shall continue to give rise to obligations on the Crown under the Treaty of Waitangi; (b) the Minister shall develop policies to recognise use and management practices of Maori; (c) the Minister shall recommend the making of regulations to recognise and provide for customary food gathering; but (d) the rights of Maori in non-commercial fishing giving rise to such claims shall henceforth have no legal effect and are not enforceable in civil proceedings and shall not provide a defence to any other proceeding except to the extent the rights are provided for in regulations made under s 89 of the Fisheries Act 1983	<a href="http://faolex.fao.org/docs/pdf/nze5601.pdf">http://faolex.fao.org/docs/pdf/nze5601.pdf</a>
New Zealand - Cook Islands	Cook Islands Act 1915 (No. 40 of 1915)	S 2: 'customary land' means any land which, being vested in the Crown, is held by Natives or the descendants of Natives under the Native customs and usages of the Cook Islands; 'Native' means a person belonging to any of the Polynesian races (including the Maori race), and includes a half-caste and a person intermediate in blood between a half-caste and a person of pure descent from any such race; 'Native custom' means the ancient custom and usage of the Natives of the Cook Islands; 'Native land' means customary land or Native freehold land; 'Native freehold land' means land which, or any undivided share in which, is owned by a Native [or a descendant of a Native] for a beneficial estate in fee simple, whether legal or equitable S 354: all land is vested in the Queen, subject to all lawfully held rights at the commencement of this Act, whether by virtue of Native custom and usage or howsoever S 359: (4) when land taken for public purposes is Native customary land, the Land Court shall investigate the customary title to that land and determine the persons entitled thereto, and their interests, and the High Court shall thereupon award compensation S 362: the High Commissioner may purchase, or acquire by grant any limited interest in, any Native freehold or European land for any public purpose S 409: jurisdiction of the Land Court includes: (a) to determine as between Natives any claim to ownership or possession of Native freehold land or any right in such land; (b) to determine relative interests of the owners in common of Native freehold land; (c) to determine as between Natives any claim for damages for trespass or any other injury to Native freehold land; (d) to grant an injunction in respect of actual or threatened trespass or other injury to Native freehold land; (f) to determine any question as to the right of any person to hold office as an Ariki or other Native chief S 409A: the Land Court may, without the consent of any person being required, lay out a right of way over any Native land for the purpose of providing access to any other Native land (further detail on procedure)	<a href="http://faolex.fao.org/docs/texts/cok65474.doc">http://faolex.fao.org/docs/texts/cok65474.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
		<p>S 410: High Commissioner may confer upon the Land Court jurisdiction in any matter affecting exclusively the rights of Natives in any real or person property</p> <p>S 417: when the High Commissioner is satisfied that land is free from Native customary title, he may declare it to be so and that is conclusive proof that it is such</p> <p>S 418: no Crown disposition of land shall be invalidated by the fact that Native customary title to that land has not been duly extinguished</p> <p>S 419: Native customary title shall not extend to any land below the line of high-water mark</p> <p>S 420: (1) For the purpose of recovering possession of customary land from any person in wrongful occupation thereof, all such land shall be deemed to be Crown land</p> <p>S 421: (1) the Land Court has exclusive jurisdiction to investigate title to customary land and determine relative interests of the owners thereof</p> <p>S 422: every title to and interest in customary land shall be determined according to ancient custom and usage of the Natives</p> <p>S 423: the Land Court may make a freehold order, naming the persons entitled to the land, and their interests</p> <p>S 424: a freehold order has the effect of vesting the land in the persons named therein, and shall thereupon cease to be customary land and become Native freehold land</p> <p>S 426: (1) when by Native custom any land belongs to an Ariki or other chief by virtue of office, the Land Court in making a freehold order in respect of that land may declare accordingly and the land shall vest in fee simple in the Ariki or chief and his successors in office</p> <p>S 429: the Land Court has exclusive jurisdiction to partition Native freehold land (further provisions on procedure etc)</p> <p>S 438: an alienation of Native freehold land by way of exchange may be effected by the Land Court (further provisions on procedure etc)</p> <p>S 445: no will made by a Native shall have any force with respect to his interest in Native land</p> <p>S 446: the persons entitled on the death of a Native to succeed to his real estate shall be determined in accordance with Native custom, and if there is no custom, in the same manner as if the deceased was a European</p> <p>Part XV: adoption of children by natives</p> <p>Part XVI: alienation of native land</p> <p>S 466: (1) all prohibitions or restrictions on the alienation of land by a Native or of Native land which have been imposed by Act or other order prior to this Act shall be removed; (2) subject to this Act, a Native may dispose of any land or interest therein in the same manner as a European, and Native land may be disposed of in the same manner as if it was European Land</p> <p>S 467: no person shall be capable of disposing of customary land or any interest therein</p> <p>S 468: no Native shall be capable of alienating Native freehold land for an estate in fee simple</p> <p>S 487: the High Commissioner may reserve any Native land, whether freehold or customary, as a Native reservation for the purposes of a burial ground, fishing ground, village site, landing place etc or any other specified purpose whatsoever</p>	
Norway	Forestry Act 2005	S 2: this Act may not be applied in contravention of the rights of Sami reindeer herders to timber and fuel	<a href="http://www.ub.uio.no/ujur/ulovdata/lov-20050527-031-eng.pdf">http://www.ub.uio.no/ujur/ulovdata/lov-20050527-031-eng.pdf</a>
Papua New Guinea	Environment Act 2000	<p>S 2: 'customary rights to use of water or land' means rights to the use of water or land- (a) that are regulated by custom, and (b) that are being availed of at the time in question, or in the normal course of land management, would be availed of in a customary manner within a reasonable period after that time</p> <p>S 79: (2) this Act does not affect customary rights to the use of water by the citizens resident in the area in which those customary rights are exercised</p> <p>S 87: (1) the holder of a permit is liable to pay compensation any person with customary rights in any private land</p> <p>S 90: list of rights conferred on holder of a water investigation permit, but does not confer the right to authorize the doing of any act prejudicing any customary rights to the customary use of water</p>	<a href="http://faolex.fao.org/docs/texts/png70607.doc">http://faolex.fao.org/docs/texts/png70607.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
Papua New Guinea	Forestry Act 1991	<p>S 2: 'customary owners' means persons having customary rights- (a) of ownership over land; or (b) of ownership of forest produce growing on the land; or (c) relating to the use of the land; 'timber rights purchase area' means an area of customary land over which the state has acquired the rights of felling, cutting, removing and disposing of timber</p> <p>S 46: the rights of the customary owners of a forest resource shall be fully recognized and respected in all transactions affecting the resource</p> <p>S 56: (1) the Authority may acquire timber rights from customary owners pursuant to a Forest Management Agreement</p>	<a href="http://www.paclii.org/pg/legis/consol_act/fa1991139/">http://www.paclii.org/pg/legis/consol_act/fa1991139/</a>
Papua New Guinea	Land Act 1996	<p>S 2: 'custom' means the customs and usages of indigenous inhabitants existing in relation to land or the use of land at the time when and in the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial; 'customary land' means land that is owned or possessed by an automatic citizen or a community of automatic citizens by virtue of rights of a proprietary or possessory kind that belong to that citizen or community and arise from and are regulated by custom; 'customary rights' means rights of a proprietary or possessory kind in relation to land that arise from and are regulated by custom</p> <p>S 4: (1) all land other than customary land is the property of the State</p> <p>S 5: (4) where the Minister declares that land appears not to be customary land, and before the expiration of 3 months from the date of publication, a claim that the land is subject to customary law is made, the Minister shall refer the matter to the Land Titles Commission</p> <p>S 9: where it is intended to acquire customary land, the Minister may apply to the Land Titles Commission or Local Land Court for a determination of ownership and interests in the land</p> <p>S 10: (1) subject to s 11, customary land shall be acquired in accordance with this section; (2) the Minister may acquire customary land on such terms as agreed upon between him and the customary landowners; (3) subject to subs (4), the Minister shall not acquire customary land unless he is satisfied that the land is not required by the customary landowners or persons on whom the land may devolve by custom; (4) where the Minister is satisfied that the land is not required for a certain period but may be required after that period, he may lease the land for that period</p> <p>S 11: (1) Minister may lease customary land for the purpose of granting a special agricultural and business lease; (2) an instrument of lease is conclusive evidence that the State has good title and that all customary rights except those specifically reserved are suspended; (3) no rent or other compensation is payable</p> <p>S 17: (1) a person entitled to land particularly (a) a customary landowner... is empowered, notwithstanding anything to the contrary in law, custom, or deed etc (j) to lease, sell or convey to the State the land, (k) if the land is compulsorily acquired by the State, make a claim for compensation; (2) the powers conferred by subs (1) may be exercised (a) by the customary landowners - on behalf of all persons who would otherwise have subsequently become entitled to the land by virtue of custom and in defeasance of customary rights of those persons</p> <p>S 18: provisions relating to dealing with money (rent, purchase money, or compensation) is received under a lease, sale or agreement made by a customary landowner</p> <p>S 48: (2) where land that was customary land is no longer required for the purpose for which it was acquired, and within 7 years after the date of acquisition it is proposed to grant a State lease for a different purpose, the Minister should declare the land to be customary land under s 132</p> <p>S 66: any provision of a State lease of customary land leased to the State that is inconsistent with the terms of the lease from the customary landowners is of no effect</p> <p>S 102: (2) a special agricultural and business lease shall be granted to persons whom the customary landowners have agreed that such a lease should be granted</p> <p>S 132: subject to ss10-11, a customary landowner has no power to sell, lease or otherwise dispose of customary land or rights otherwise than to citizens in accordance with custom</p> <p>S 133: the Minister may declare any Government land or trust land to be customary land</p> <p>S 134: Custodian for Trust Land shall establish, further and protect the interests of customary landowners</p> <p>S 144: offence of trespass on Government or customary land</p> <p>S 15: offence of unlawful occupation of Government or customary land</p>	<a href="http://faolex.fao.org/docs/pdf/png20843.pdf">http://faolex.fao.org/docs/pdf/png20843.pdf</a>



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Papua New Guinea	Land Groups Incorporation Act (Ch 147) 1974	<p>S 1: purposes of this Act are to encourage (a) participation, (b) better use of land, (c) greater certainty of title, (d) effectual settlement of disputes, by (e) legal recognition of corporate status of customary groups and confer on them the power to acquire, hold, dispose of and manage land</p> <p>S 2: (1) 'relevant custom' means any custom that is binding on the group or all members of the group and includes any custom referred to in the constitution; (2) a reference to the dispute settlement authority shall mean (a) in any case where the Registrar is of the opinion that it would be inappropriate for the dispute settlement authority to act, as a reference to (i) any Village Court, or (ii) if there is no Village Court, a customary authority have customary jurisdiction</p> <p>S 5: (1) upon application, the Registrar may recognise a customary group as an incorporated land group by issuing it a certificate of recognition</p> <p>S 7: (1) register of incorporated land groups</p> <p>S 13: (1) powers of an incorporated land group (a) relate only to land and its use and management, (b) shall be regulated by its constitution and any relevant custom, and (c) shall be exercised in the manner specified by its constitution or any relevant custom; (2) subject to subss (1) and (3), an incorporated land group may - (a) acquire, hold and dispose of customary land and rights in the manner allowed by custom ... (c) use and manage the land...</p> <p>S 19: on the dissolution of an incorporated land group, any customary land owned by the group reverts to the persons who would be the customary owners if the group had not been recognised</p> <p>S 24: a dispute settlement authority or court dealing with a dispute ... (d) shall endeavour to do substantial justice between all persons interested in accordance with this Act, the constitution and any relevant custom</p>	<a href="http://faolex.fao.org/docs/texts/png20852.doc">http://faolex.fao.org/docs/texts/png20852.doc</a>
Papua New Guinea	Underlying Law Act 2000	<p>S 1: (1) In this Act, unless the contrary intention appears: ... "customary law" means the customs and usages of the indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial</p> <p>S 3: (1) The sources of the underlying law shall be: (a) the customary law; and (b) the common law in force in England immediately before the 16th September, 1975. (2) The principles and rules of customary law shall be applied with the qualifications and subject to the conditions as set out in this Act.</p> <p>S 4: (1) Subject to Subsection (2) or (3): (a) the customary law; and (b) the common law, shall be adopted and applied as part of the underlying law. (2) The customary law shall apply unless: (a) it is inconsistent with a written law; or (b) its application and enforcement would be contrary to the National Goals and Directive Principles and the Basic Social Obligations established by the Constitution; or (c) its application and enforcement would be contrary to the basic rights guaranteed by Division III.3 (Basic Rights) of the Constitution. (3) The common law shall not be applied unless: ... (c) it is consistent with the customary law as applied under Subsection (2)... (4) A court which: (a) refuses to apply a principle or rule of customary law, shall give reasons for its refusal in terms of Subsection (2)(a), (b) or (c)</p> <p>S 6: Subject to this Act, in dealing with the subject matter of a proceeding, the court shall apply the laws in the following order: (a) written law; and (b) the underlying law; and (c) the customary law; and (d) the common law.</p> <p>S 7: (1) Where the written law does not apply to the subject matter of a proceeding, the court shall apply the underlying law. (2) If the underlying law does not apply to the subject matter of a proceeding, the court shall apply the customary law unless: (a) subject to Subsection (6), the court is satisfied that the parties intended that the customary law shall not apply to the subject matter of the proceeding; or (b) the subject matter of the proceedings is unknown to the customary law and cannot be resolved by analogy to a rule of customary law without causing injustice to one or more parties... (4) Subject to Subsection (5), if: (a) the underlying law; and (b) the customary law; and (c) the common law, do not apply to the subject matter of a proceeding, the court shall formulate a rule, appropriate to the circumstances of the country, as part of the underlying law. (5) The court in formulating a rule under Subsection (4) shall have regard to: ... (c) analogies drawn from the relevant written law and customary law ... (6) The court may apply the customary law, if it is satisfied that a party to the subject matter of a proceeding under Subsection (3)(a) intended to avoid, for an unjust purpose, the consequences of the customary law.</p> <p>S 9: In a proceeding, if the Supreme Court or the National Court considers that a rule of the underlying law is no longer appropriate to the circumstance of the country, it may formulate a new rule, appropriate to the circumstances of the country, as part of the underlying law, having regard to: ... (c) analogies drawn from the relevant written law and customary law</p> <p>S 11: (1) The parties to a proceeding shall bring evidence or information to assist the court in deciding on whether: (a) to apply a principle or rule of customary law; or (b) to apply a principle or rule of common law; or (c) to formulate a rule</p>	<a href="http://www.paclii.org/pg/legis/consol_act/ula2000173/">http://www.paclii.org/pg/legis/consol_act/ula2000173/</a>

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		<p>of the underlying law, to resolve the subject matter of a proceeding. (2) The court, upon receiving the evidence or information under Subsection (1), shall make a decision: (a) to apply a principle or rule of customary law; or (b) to apply a principle or rule of the common law; or (c) to formulate a rule of the underlying law; or (d) on the manner in which a rule of the customary law or the underlying law should be formulated, to resolve the subject matter of a proceeding.</p> <p>S 15: (1) A counsel appearing in a proceeding in which a question of whether the customary law applies in that proceeding, is under a duty to assist the court by calling evidence and obtaining information and opinion that are relevant which would assist the court in determining: (a) the nature of the relevant rules of customary law; and (b) whether or not to apply those rules in the proceedings. (2) A counsel in carrying out his duty under Subsection (1) may refer to matters provided for in Section 16(2)(b) (i), (ii) and (iii).</p> <p>S 16: (1) A question as to the existence or content of a rule of customary law is a question of law and not a question of fact. (2) The court, when determining a question under Subsection (1): (a) shall consider the submissions made by or on behalf of the parties concerning the customary law relevant to the proceedings; and (b) may: (i) refer to cases, books, treaties, reports and other works of reference on the customary law relevant to the proceedings; and (ii) refer to statements and declarations of customary law made by local, provincial and other authorities in accordance with a law empowering them to make such statements and declarations; and (iii) consider evidence and information concerning the customary law relevant to the proceeding presented to it by a person whom the court is satisfied has knowledge of the customary law relevant to the proceedings; and (iv) of its own motion, obtain evidence and information and obtain the opinions of persons as it thinks fit. (3) Notwithstanding any provision in any other law, when a court is hearing an appeal or conducting a review of a question concerning the customary law, the court may make further enquiries into the customary law by exercising the powers set out in Subsection (2).</p> <p>S 17: (1) Where a question arises, as to which particular customary law should apply to a subject matter of a proceeding, the court shall determine this question in accordance with the following rules: (a) where the parties belong to the same community, the customary law of that community; or (b) where the parties belong to communities with different customary law rules on the subject matter of the proceeding: (i) the customary law that the parties intend to govern the subject matter; and (ii) if no such intention can be discovered, the customary law that is, in the opinion of the court, most appropriate to the subject matter; or (c) where the matter concerns a question of succession, the customary law of the community to which the deceased belonged, except with regard to interests in land, in which case the customary law of the place where the land is situated shall apply; or (d) in all other cases the court shall apply the customary law it considers most appropriate to a particular case. (2) In deciding on which customary law is to apply under Subsection (1)(b) and (d), the court shall have regard to – (a) the place and nature of the transaction, act or event; and (b) the nature of residence of the parties.</p> <p>S 24: (1) A principle or rule of customary law or a principle or rule of common law or a formulated rule of the underlying law which was in effect immediately before the coming into operation of this Act, is adopted and applied as part of the underlying law, on the coming into operation of this Act.</p>	
Paraguay	Procedural Penal Code, Act 1.286/98	<p>Unofficial translation</p> <p>S 26: Also extinguish the criminal procedure in the case of offenses involving juridical interests of a community of indigenous or personal property of any member and both the accused and the victim or, where appropriate, their families, accept the way as the community has resolved the conflict in accordance with their own customary law. In these cases, any member of the indigenous community may request a declaration of termination of criminal proceedings before the district judge. The district judge shall call the victim or his family, the accused, the representative of the Prosecution Office and the legal representatives of the community or when they are not appointed, six members of the community chosen by the victim and the accused to a hearing within three days of the application to verify whether the requirements of this section and of the Constitution are met.</p>	<p>In Spanish:  <a href="http://www.oas.org/juridico/MLA/sp/pry/sp_pry-int-text-cpp.pdf">http://www.oas.org/juridico/MLA/sp/pry/sp_pry-int-text-cpp.pdf</a></p>

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Philippines	Indigenous Peoples Rights Act 1997	S 3: (a) Ancestral Domains - all areas generally belonging to Indigenous Cultural Communities/Indigenous Persons (ICCs/IPs) comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs since time immemorial, continuously to the present and which are necessary to ensure their economic, social and cultural welfare; (b) Ancestral Lands - land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial continuously to the present; (c) Sustainable Traditional Resource Rights - rights of ICCs/IPs to sustainably use, manage, protect and conserve: (a) land, air, water, and minerals; (b) plants, animals and other organisms; (c) collecting, fishing and hunting grounds; (d) sacred sites; and (e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices Ch 3 - rights to ancestral domains	<a href="http://www.grain.org/bri_files/philippines-ipra-1999-en.pdf">http://www.grain.org/bri_files/philippines-ipra-1999-en.pdf</a>
Philippines	National Integrated Protected Areas System Act 1992 (Republic Act No. 7586 of 1992)	S 4: (d) 'indigenous cultural community' refers to a group of people sharing common bonds of language, customs, traditions and other distinctive cultural traits, and who have, since time immemorial, occupied, possessed and utilised a territory S 9: there shall be a general management planning strategy to serve as a guide in formulating individual plans for each protected area. The management planning strategy shall provide guidelines for the protection of indigenous cultural communities S 13: ancestral lands and customary rights arising shall be accorded due recognition. The Department of Environment and Natural Resources (DENR) shall prescribe rules to govern ancestral lands within protected areas. The DENR shall have no power to evict indigenous communities nor resettle them without their consent	<a href="http://faolex.fao.org/docs/html/phi19796.htm">http://faolex.fao.org/docs/html/phi19796.htm</a>
Philippines	Wildlife Resources Conservation and Protection Act 2001	S 5: (u) 'Traditional use' means utilization of wildlife by indigenous people in accordance with written or unwritten rules, usage, customs and practices traditionally observed, accepted and recognized by them; S 7: collection of wildlife by indigenous people may be allowed for traditional use and not primarily for trade, provided that collection and utilization for said purpose shall not cover threatened species S 27: it shall be unlawful for any person to undertake the following acts: (a) killing and destroying wildlife species, except in the following instances: (i) when it is done as part of the religious rituals of established tribal groups or indigenous cultural communities;	<a href="http://www.chanrobles.com/republicactno9147.html">http://www.chanrobles.com/republicactno9147.html</a>
Portugal	Decree-Law No. 118/2002 on the registration, conservation, legal safeguarding and transfer of autochthonous plant material to agrarian, agroforest and landscape activity	Art 3: (1) traditional knowledge comprises all intangible elements associated with the commercial utilisation of autochthonous material developed in a non-systematic manner by local populations which form part of the cultural and spiritual traditions of those populations; (2) that knowledge shall be protected against reproduction or commercial or industrial use as long as (a) the traditional knowledge is registered in the Register of Plant Genetic Resources, and (b) the description in the register is phrased so that third parties may reproduce the traditional knowledge; (3) provision for the owners of the traditional knowledge to choose to keep it confidential; (7) the provisions of arts 7 (access to and allocation of benefits), 9 (applicant for registration), 10 (rights and obligations of the owner of the registration), 12 (registration bulletin), 13 (violations), and 14 (accompanying sanctions) apply to traditional knowledge	<a href="http://faolex.fao.org/docs/texts/por50973E.doc">http://faolex.fao.org/docs/texts/por50973E.doc</a>
Russian Federation	Federal Law No. 52 FZ on wildlife 1995	Note: the following is an unofficial translation. Art 48: Citizens of the Russian Federation whose subsistence and earnings are totally or partially based upon traditional ancestral subsistence systems, including hunting, fishery and collection of natural products shall have the right to use traditional methods of procurement of the objects of wildlife and products of the vital functions thereof, if such methods do not lead directly or indirectly to the reduction of biodiversity, the number and sustainable reproduction of the objects of wildlife, do not disturb natural habitat thereof and are not harmful to man. The aforesaid citizens may exercise this right either individually or collectively by setting up associations on various bases (family, tribal, territorial economic communities, hunting associations, natural products collectors associations, fishing associations, etc.). Conservation and stimulation of the traditional methods of use and protection of the wildlife, natural habitat thereof shall be compatible with the requirements set for sustainable existence and sustainable use of the wildlife. Art 49: Sparsely distributed indigenous population and ethnic communities whose indigenous culture and way of life include traditional methods of protection and use of the objects of wildlife, citizens belonging to the aforesaid groups of population and associations thereof shall be granted the right of priority use of the wildlife on the traditionally inhabited territory and economic activity conducted thereby.	In Russian and unofficial translation: <a href="http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&amp;search_type=query&amp;table=result&amp;query=LEX-FAOC022375&amp;format_name=@ERALL&amp;lang=en">http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&amp;search_type=query&amp;table=result&amp;query=LEX-FAOC022375&amp;format_name=@ERALL&amp;lang=en</a>

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		<p>Right of priority use shall include: - granting of prime choice of hunting and fishing areas to citizens belonging to the groups of population specified in the first part of this Article, and to the associations thereof; - preferences as regards hunting periods and hunting areas, sex, age and number of the objects of wildlife authorized for hunting, and also the products of the vital functions thereof; - other types of use of the wildlife coordinated with authorized body competent for protection, supervision and regulation of use of the objects of wildlife and natural habitat thereof. Right of priority use of the wildlife shall be applicable to citizens belonging to the groups of population specified in the first part of this Article, and also to other citizens permanently residing on the aforesaid territory and legitimately included in one of the groups of population specified in the first part of this Article. If the same territory is traditionally inhabited by two or more groups of population that conduct economic activity thereon either by the groups specified in the first part of this Article or by other groups, the aforesaid groups shall have the right of priority use of the wildlife. Field of application of this right shall be determined in accordance with the mutual agreement between the aforesaid groups of population. Transfer of the right of priority use of the wildlife to citizens and legal entities not specified in the first part of the Article 48 of this Federal law shall be prohibited.</p>	
Russian Federation	Federal Law No. 82-FZ on ensuring traditional rights of sparsely distributed indigenous peoples of the Russian Federation 1999	<p>This Federal Law guarantees the traditional rights of sparsely distributed indigenous peoples to protect their natural habitats, traditional ways of life, economic activities and fishing and hunting rights. An ethnic community with fewer than 50,000 persons living on ancestral land and maintaining traditional ways of life and community management shall be considered a sparsely distributed indigenous peoples. The Government shall validate a common national register of these indigenous communities, and federal executive bodies shall implement federal and regional programmes to protect their traditional rights regarding land tenure, traditional community management of natural resources, and land surveys and monitoring.</p> <p>See particularly (note: unofficial translation):</p> <p>Art 14: The persons concerning to small peoples and association of small peoples have the right to judicial protection of the primordial inhabitancy, a traditional way of life, managing and crafts of the small peoples, carried out in the order provided by federal laws. By consideration in courts has put, in which persons, concerning to small peoples, represent itself as claimants, defendants, injured persons or criminal defendants, traditions and the customs of these peoples which are not contradicting to federal laws and laws of subjects [regions] of the Russian Federation can be considered.</p>	<p>In Russian:  <a href="http://faolex.fao.org/docs/texts/rus79128.doc">http://faolex.fao.org/docs/texts/rus79128.doc</a></p> <p>For 2009 amendment, See  <a href="http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&amp;search_type=query&amp;table=result&amp;query=LEX-FAOC093412&amp;format_name=@ERALL&amp;lang=en">http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&amp;search_type=query&amp;table=result&amp;query=LEX-FAOC093412&amp;format_name=@ERALL&amp;lang=en</a></p>

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Russian Federation	Federal Law No. 104-FZ on general principles of organization of communities of indigenous scanty population of the North, of Siberia and of the Far East of the Russian Federation 2000	This Law establishes general principles of organisation and activity of the communities of scanty indigenous population of the North, Siberia and the Far North of the Russian Federation, created for the purpose of the primordial habitats, traditional way of life, rights and legal interests of indigenous scanty population, as well as community management and state guarantees of its implementation. Art 1: introduces main concepts Art 2: specifies relations regulated by this Law Art 3: defines the sphere of action of this Law Art 4: legislation on indigenous scanty population Art 5: principles of organisation of the communities of scanty population Art 6: restriction of activity of the communities of scanty population Art 7: relationship between the communities of scanty population and state executive bodies and local self-government Art 8: organisation of communities of scanty population Art 9: constituent assembly of a community of scanty population Art 10: statute of a community of scanty population Art 11: community membership Art 12: rights of a community of scanty population Art 13: duties of the members of community Art 14: general meeting of a community Art 15: board of administration of a community Art 16: plenary powers of the president of board of administration Art 17: property of a community Art 18: privileges conceded to a community Art 19: activity of a community of scanty population in the sphere of education and culture Art 20: associations of communities of scanty population Art 21: reorganisation of communities of scanty population and associations of communities Art 22: liquidation of communities and associations of communities Art 23: appeals against state executive bodies and local self-government Art 24: final provisions.	In Russian: <a href="http://faolex.fao.org/docs/texts/rus44768.doc">http://faolex.fao.org/docs/texts/rus44768.doc</a>
Russian Federation	Federal Law No. 131-FZ on the Principles of Local Self-Government in the Russian Federation 2003	Note: unofficial translation. Art 1: (1) Local self-government makes one of bases constitutional building the Russian Federation, admits, guaranteed and carried out in all territory of the Russian Federation. (2) Local self-government in the Russian Federation – the form of realization by people of the authority, providing... decision by the population, direct and (or) through institutions of local government, of local questions reasoning from interests of the population taking into consideration historical and other local traditions.	In Russian: <a href="http://www.icfinternational.ru/doc_files/opms.pdf">http://www.icfinternational.ru/doc_files/opms.pdf</a>
Russian Federation	Federal Law No. 209-FZ on hunting and conservation of hunting resources 2009	Note: unofficial translation Art 11: (2) With a view of maintenance of conducting a traditional way of life and realization of traditional economic activities of indigenous small peoples of the North, Siberia and the Far East the Russian Federation include to the hunting resources cormorants, seagulls [other species]. Art 19: (2) Hunting with a view of maintenance of conducting a traditional way of life and realization of traditional economic activities is carried out freely (without any permits) in volume of extraction of the hunting resources, necessary for satisfaction of personal consumption.	Unofficial translation: <a href="http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&amp;search_type=query&amp;table=result&amp;query=LEX-FAOC093181&amp;format_name=@ERALL&amp;lang=en">http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&amp;search_type=query&amp;table=result&amp;query=LEX-FAOC093181&amp;format_name=@ERALL&amp;lang=en</a>
Samoa	Alienation of Customary Land Act 1965	S 3: unlawful to lease or licence any customary land for any agricultural or pastoral purpose to any Samoan who is not a holder of Matai title	<a href="http://www.paclii.org/ws/legis/consol_act/aocla1965283/">http://www.paclii.org/ws/legis/consol_act/aocla1965283/</a>

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Samoa	Land and Titles Act 1981	<p>S 2: 'custom and usage' means the customs and usages of Samoa accepted as being in force at the relevant time and includes: (a) the principles of custom usage accepted by the people of Samoa in general; and (b) the customs and usages accepted as being in force in respect of a particular place or matter; 'land' means customary land; 'matai' means a person whose title has been registered under this Act; 'pulefaamau' means the ownership of any customary land or the control of any Samoan name or title either by a person in his sole right or on behalf of any Samoan title, family, village or district</p> <p>S 8: land deemed to be customary land (court ordered, conveyed by Government etc)</p> <p>S 9: (1) any person claiming an interest in any land in respect of which customary or freehold status is claimed to be in doubt may petition the Court for an order declaring such land to be customary land (plus procedural details)</p> <p>S 11: the Registrar of the Court shall transmit to the Land Registrar every judgement of the Court concerning title of any customary land, and every order made under ss 8 or 9.</p> <p>S 14: any Samoan who claims a pulefaamau or who intends to appoint any person to be the holder of a matai name or title may give notice of such claim to the Registrar</p> <p>S 20: 'rightful holder' means a person who (a) has been appointed the holder of a matai name or title by customs and usages of the Samoan people; and (b) has the traditional ceremony of appointment in a village to which that name or title belongs; and (c) has been recognised as the rightful holder of the matai name or title in question under ss 23(5), (6) or (7).</p> <p>S 22: register of matais to be kept (ss 22 and 23 have further provisions on procedure for appointing a matai etc)</p> <p>S 34: (2) the Land and Titles Court shall have exclusive jurisdiction: (a) in all matters relating to Samoan names and titles, (b) to make declarations in respect of Samoan names and titles as necessary to preserve them or the rights or obligations attached to them in accordance with customs and usage, (c) in all disputes between Samoans relating to customary land, and the right of succession in accordance with customs and usages</p> <p>S 37: (1) in all matters before it the Court shall apply (a) custom and usage, (b) the law relating to custom and usage, (c) this Act and any other Act expressed to apply to the Court</p> <p>S 79: (1) leave to appeal may be granted on the following grounds: (f) that the decision is wrong in law or not in accordance with custom and usage</p>	<a href="http://www.ecolex.org/ecolex/ledge/view/RecordDetails;document_Land%20and%20Titles%20Act%201981..html?DIDPFDSIjsessionid=CA1783017655627004CE21692F95BE9F?id=LEX-FAOC035648&amp;index=documents">http://www.ecolex.org/ecolex/ledge/view/RecordDetails;document_Land%20and%20Titles%20Act%201981..html?DIDPFDSIjsessionid=CA1783017655627004CE21692F95BE9F?id=LEX-FAOC035648&amp;index=documents</a>
Samoa	Water Resources Management Act 2008	<p>S 6: (4) nothing in this Act affects any rights of customary ownership of land in Samoa</p> <p>S 25: (b) consultation with customary bodies in preparation of a watershed management plan</p>	<a href="http://www.paclii.org/ws/legis/consol_act/aocla1965283/">http://www.paclii.org/ws/legis/consol_act/aocla1965283/</a>
Sierra Leone	Forestry Act 1988	<p>S 8: (1) prior to granting a forest concession in any area of national forest, a forest management plan shall be prepared, including (a) description of customary and other rights affecting the land</p> <p>S 13: (3) an agreement for forest utilisation concession shall specify- (b) the customary and other rights affecting the concession area</p> <p>S 16: (2) s 13 applies to forest plantation concessions</p> <p>S 18: (1) the Chiefdom Council of any Chiefdom may conclude an agreement providing for the constitution as a community forest of any land within the Chiefdom; (2) the agreement shall: (d) contain a detailed inventory of any rights that will be suppressed, and provide for adequate compensation through money or allocation of equivalent rights on other land within the Chiefdom, (e) contain a list of existing rights that will be confirmed by the agreement</p> <p>S 19: (1) a community forest on state land shall be managed by the Forestry Division, or pursuant to an agreement, by a unit of local government or community forest association, (2) a community forest not on state land shall be managed by the Chiefdom Council, or pursuant to an agreement, by a community forest association</p> <p>S 20: (1) the Chiefdom Council or other entity responsible for managing a community forest shall determine the conditions, including the fees and prices, under which the forest may be utilised and produce taken from it; (2) conditions, fees and prices established under subs (1) may be more favourable for inhabitants of the Chiefdom than for other person; (4) the Chiefdom Council or other entity responsible for managing a community forest shall maintain records of the utilisation, sivilcultural and afforestation activities, and all fees received, and give copies to the Forestry Division and Chiefdom Council</p>	<a href="http://faolex.fao.org/docs/pdf/sie5732.pdf">http://faolex.fao.org/docs/pdf/sie5732.pdf</a>

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Solomon Islands	Customs Recognition Act (No. 7 of 2000)	<p>S 3: subject to s 5, questions as to the existence of customary law and nature of such in relation to a matter, shall be ascertained as though they were matters of fact</p> <p>S 4: relevant facts when question as to existence of customary law: (a) any transaction, practice or usage by which the right or custom was created, claimed, modified, recognised, asserted or denied, (b) particular instances in which the right or custom was claimed, recognised or exercised or in which its exercise was disputed, asserted or departed from</p> <p>S 5: (1) a court, in considering a question in s 3, (a) is not bound to observe strict legal procedure or apply technical rules of evidence, and (b) shall consider relevant evidence as is available (including hearsay and opinion) and otherwise inform itself as it thinks proper; (3) in an appeal, the Court may consider <i>de novo</i> a question in s 3 that arises in the appeal</p> <p>S 6: custom shall be recognised and enforced by all Courts except so far as in a particular case (a) its recognition would result in an injustice or would not be in the public interest, (b) would be inconsistent with the Constitution or an Act of Parliament</p> <p>S 7: custom may be taken into account in criminal cases only for the purposes of - (a) ascertaining state of mind, (b) deciding reasonableness of an act, (c) deciding reasonableness of an excuse, (d) deciding whether to proceed to the conviction of a guilty party, (e) determining the penalty, (f) taking the custom into account to avoid injustice</p> <p>S 8: custom may be taken into account in civil cases only in relation to: (a) ownership by custom of rights in customary land, (b) ownership by custom of rights in the sea or a reef, or bed of a sea, river or lake, and rights of fishing, (c) ownership of water, (d) devolution of customary lands, (e) trespass by animals, (f) marriage, divorce or custody of infants, (g) a transaction that the parties intended or justice requires should be regulated by custom (h) deciding reasonableness of an act, (i) ascertaining state of mind, (j) taking the custom into account to avoid injustice</p> <p>S 10: where a question arises as to which of two or more systems of custom should prevail and the court is not satisfied with the evidence, it may adopt the system that it is satisfied the justice of the case requires</p>	<a href="http://faolex.fao.org/docs/texts/sol74602.doc">http://faolex.fao.org/docs/texts/sol74602.doc</a>
Solomon Islands	Forest Resources and Timber Utilisation Act 1970	<p>S 5: (1) upon an application for the granting of a licence authorising the felling and removal of timber from- (c) customary land, when under an agreement approved by the Minister under Part III, the Commissioner of Forest Resources may accept or reject the application</p> <p>S 7: (1) requires anyone wishing to export or sawmill timber, and desiring to acquire timber rights on customary land, to obtain consent from the Commissioner to negotiate with the Government, area council and owners of customary land</p> <p>S 8: (1) the area council shall hold a meeting with the Government, customary landowners and applicant to determine matters in subs (3) (e.g. nature and extent of rights to be granted, sharing of profits)</p> <p>S 9: (1) where there is no agreement between the applicant and the customary landowners, the Commissioner shall reject the application; (2) upon reaching a determination under s 8(3) the council shall issue a certificate setting out its determination</p> <p>S 10: (1) any person aggrieved by the determination of the council made under ss 8(3)(b) (capacity to grant timber rights) or (c) (nature and extent of timber rights to be granted) may appeal to the customary land appeal court</p> <p>S 11: on receipt of a certificate under s 9 and all appeals being disposed of, the Commissioner shall recommend approval of such agreement</p> <p>S 15: any matter arising out of an approved agreement shall be heard only by the High Court</p> <p>S 43: nothing in s 241 of the Land and Titles Act shall prohibit a person other than a Solomon Islander from acquiring any right to cut or remove trees growing on customary land, or any right of access over customary land for such purpose</p> <p>S 44: the Minister may make regulations, in particular may: (s) declare any land (including customary land) as a sanctuary for the purpose of conservation and prohibit felling of any tree, provided that no customary land shall be declared as a sanctuary unless compulsorily acquired under Part V of the Land and Titles Act</p>	<a href="http://faolex.fao.org/docs/texts/sol65423.doc">http://faolex.fao.org/docs/texts/sol65423.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
Solomon Islands	Land and Titles Act 1969	<p>S 2: (1) 'current customary usage' means the usage of Solomon Islanders obtaining in relation to the matter in question at the time when that question arises, regardless of whether that usage has obtained from time immemorial or any less period; 'customary land' means any land (not being registered land, other than land registered as customary land, or land in respect of which any person becomes or is entitled to be registered as the owner of an estate pursuant to the provisions of Part III) lawfully owned, used or occupied by a person or community in accordance with current customary usage, and shall include any land deemed to be customary land by para 23 of Sch 2 of the repealed Act; 'owner' in relation to customary land, means the person or persons who is or are, according to current customary usage, regarded as the owner or owners of the land</p> <p>S 39: the Settlement Officer may appoint a committee to advise him on any point of customary usage etc</p> <p>S 45: (3) where customary land contains economic trees which are, according to customary usage, owned by a person other than the owner of the land itself, the Recording officer may adjust the rights of such owners by the exchange of land, payment of money, creation of a charge or grant of a leases for the estimated life of the trees so that ownership of the land and trees is vested in the same person subject to any charge, lease or profit.</p> <p>S 46: (1) in preparing the record under s 47, the recording officer shall, if he is satisfied (a) that any person has, in accordance with customary usage, exercised rights over customary land which amount to rights equivalent to those of the owner of perpetual estate in land, record that person as entitled to be registered as such, (e) that land is used for a village residential area, a burial ground or other sacred place, or a village fruit grove, water hole or other special purpose, record it as customary land for that purpose</p> <p>S 47: the Recording Officer shall prepare a record containing the following details: (b) the title to the land (including if it is customary land), (c) particulars of every other registrable interest affecting the parcel, whether by virtue of current customary usage or otherwise</p> <p>S 49: (1) if the Settlement Officer considers that the settlement section is not ready because the customary rights are not sufficiently determinate, (a) he may recommend that the settlement section be withdrawn from the settlement area, or (b) direct that land to be recorded as customary land.</p> <p>S 60: notwithstanding any current customary usage prohibiting such, customary land may be sold or leased to the Commissioner</p> <p>S 71: (1) whenever it appears to the Minister that any land is required for any public purpose, he may make a declaration to that effect</p> <p>S 75: on publication of a declaration as per s 71, all interests in or affecting the land in the declaration shall, subject s 76, cease to subsist and the Registrar shall make a note in the registers that perpetual estate free from all other interests is vested in the Commissioner</p> <p>S 76: appeal to High Court by any person whose interest ceases to subsist under s 75 within 6 months</p> <p>S 79: (1) any person whose interest ceases to subsist under s 75 may claim compensation within 3 months</p> <p>S 84: (1) where the land to be acquired is customary land, the Commissioner may offer transfer or grant of an estate in land in lieu of compensation claimed</p> <p>S 239: (1) the manner of holding, occupying, using, enjoying and disposing of customary land shall be in accordance with current customary usage; (2) for the purpose of ascertaining current customary usage, a court may refer to books, treaties, reports, or other works of reference</p> <p>S 240: every transaction or disposition affecting interests in customary law shall be made according to the current customary usage</p> <p>S 241: (1) no person other than a Solomon Islander may hold any interest in customary land (exceptions for marriage etc)</p> <p>S 242: the Commissioner may declare any land held in his name free from encumbrances to be customary land</p> <p>S 254: (1) a local court shall have exclusive jurisdiction in all matter of a civil nature affecting or arising in connection with customary land, except if otherwise provided in this Act or matters determining whether the land is customary law</p> <p>S 255: (1) Chief Justice may establish customary land appeal courts, (4) a customary land appeal court shall have all the powers of a local court</p>	<a href="http://faolex.fao.org/docs/texts/sol50852.doc">http://faolex.fao.org/docs/texts/sol50852.doc</a>
South Africa	Communal Land Rights Act	<p>S 1: 'communal land' means land contemplated in s 2 which is, or is to be, occupied or used by members of a community subject to the rules or custom of that community;</p> <p>S 5: (1) communal land is capable of being and must be registered in the name of the community or person entitled to</p>	<a href="http://www.mangaung.co.za/docs/Communal%20Land%20Rights%20Act">http://www.mangaung.co.za/docs/Communal%20Land%20Rights%20Act</a>



Jurisdiction	Legislation	Scope of provision	Access
		such land	pdf
South Africa	Interim Protection of Informal Land Rights Act 1996 (No. 1057 of 1996)	S 1: (1)(ii) 'community' means any group of persons whose rights to land are derived from shared rules determining access to land held in common by such group; 'informal right to land' means- (a) the use of, occupation of, or access to land in terms of- (i) any tribal, customary or indigenous law or practice of a tribe (etc); (vii) 'tribe' includes- (a) any community living and existing like a tribe; and (b) any part of a tribe living and existing as a separate entity; (2)(a) this Act shall not confer any rights in addition to those which are already held, (b) the holder of an informal right in land shall be deemed to be an owner for the purposes of s 42 of the Minerals Act 1991 S 2: (1) subject to provisions of subs (4) and any law which provided for expropriation of land, no person may be deprived of any informal right to land without his or her consent; (2) where land is held on a communal basis, a person may be deprived of such land in accordance with the custom and usage of that community; (3) compensation if deprived of right as per subs (2) as a result of a disposal of the land; (4) custom and usage of a community shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights at a meeting convened for that purpose S 3: subject to s 2, any sale or disposition of land shall be subject to existing informal rights to that land	<a href="http://faolex.fao.org/docs/html/saf16337.htm">http://faolex.fao.org/docs/html/saf16337.htm</a>
Tanzania	Fisheries Act 2003	S 2: 'artisanal fisheries' means categories of fisheries that are of small scale and not commercially orientated, using relatively small amount of capital and in which fishers have usually a traditional involvement with fishing; S 11: (1) the Director shall ensure that- (b) the livelihood, culture and traditions of local communities and their access to fishing ground are not affected by aquaculture development S 17: Minister shall impose conditions necessary for the proper management of fisheries which are- (p) ensuring that traditional practices, which are consistent with responsible fisheries, needs and interests of indigenous people and local fishing communities which are highly dependent on fisheries resources for their livelihood are given due regard	<a href="http://www.bunge.go.tz/Polis/PAMS/Docs/22-2003.pdf">http://www.bunge.go.tz/Polis/PAMS/Docs/22-2003.pdf</a>
Tanzania	Forest Act 2002	S 2: "right of occupancy" means a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law S 24: (1) Where there is any claim arising out of customary law to rights to land, forest produce or any claim to rights based on or arising out of any other written laws, the Minister shall appoint an investigator to investigate and record the extent, the nature, the incidents and the validity of any and all such rights which have been claimed.	<a href="http://faolex.fao.org/docs/pdf/tan34429.pdf">http://faolex.fao.org/docs/pdf/tan34429.pdf</a>
Tanzania	Kibondo District Council (Cultivation of Agricultural Land) By-laws 1994 (G.N. No. 280 of 1994)	S 3: Every resident who holds land in accordance with local customary law relating to land tenure shall, unless otherwise directed in writing by an authorized officer, cultivate and maintain an area of not less than three acres out of which two acres shall be planted with cash crops and the remaining acre shall be planted with food crops. S 5: (1) residents who hold lands in accordance with s 3 shall cultivate the land in accordance with principles of good plant husbandry for the purpose of maintaining productivity; (2) residents holding land shall keep their lands free from weeds; (3) residents who find infection of insects, plant pest or disease shall promptly report such S 6: no resident shall fell crops for any purpose other than agricultural improvement or enhancement of the environment	<a href="http://faolex.fao.org/docs/pdf/tan8229.pdf">http://faolex.fao.org/docs/pdf/tan8229.pdf</a>
Tanzania	Lindi Town Council (Cultivation of Agricultural Land) By-Laws, 1991 (G.N. No. 392 of 1991)	S 4: (1) Every resident who holds land in accordance with local customary law relating to land tenure shall cultivate and maintain an area of not less than (unreadable) acre of food crops and an area of not less than one acre of cash crops; (2) the Council may determine the crops which shall be classified as food crops and cash crops S 5: residents who find infection of insects, plant pest or disease shall promptly report such S 6: residents holding land shall keep their lands clean and free from weeds S 7: (1) no resident shall fell crops except with the written authority of an agricultural officer	<a href="http://faolex.fao.org/docs/pdf/tan8991.pdf">http://faolex.fao.org/docs/pdf/tan8991.pdf</a>
Tanzania	Regulation of Land Tenure (Established Villages) Act, 1992 (No. 22 of 1992)	S 3: (1) all rights to occupy or use land in accordance with any custom or rule of customary law existing by any person in any village land prior to Operation Vijiji are extinguished; (2) to remove all doubt, the extinction of rights under subs (1) shall not effect: (a) right to occupy village land acquired by any person during or subsequent to Operation Vijiji, in any village established as a result of Operation Vijiji, or (b) any right to use or occupy land in accordance with any custom or rule of customary law existing in a village which was not established as a result of Operation Vijiji S 4: no compensation is payable on account of loss of any right extinguished under s 3	<a href="http://faolex.fao.org/docs/pdf/tan78231.pdf">http://faolex.fao.org/docs/pdf/tan78231.pdf</a>

Jurisdiction	Legislation	Scope of provision	Access
Tanzania	Village Land Act 1999	S 2: customary lease, customary mortgage, right of occupancy (under customary law) S 14: land which is or may be held for customary rights of occupancy S 18: (1) customary right of occupancy is of equal status and effect to a granted right S 19: incidents of customary lease S 20: law applicable to customary right of occupancy Part IV, B: Grant and Management of Customary Right of Occupancy	<a href="http://nfp.co.tz/document/s/Village%20Land%20Act%20No.5%20of%201999.pdf">http://nfp.co.tz/document/s/Village%20Land%20Act%20No.5%20of%201999.pdf</a>
Tanzania	Water Resources Management Act 2009	S 3: 'customary water rights' means the rights and practices in relation to water resources that have been practised by communities or individuals since time immemorial in the belief that they create binding rights and obligation S 11: (1) the powers to confer a right to the use of water from any water source is vested in the Minister save to the extent that it is alienated by any other written or customary law	<a href="http://www.maji.go.tz/modules/documents/index.php?action=downloadfile&amp;filename=THE%20WATER%20RESOURCES%20MANAGEMENT%20ACT.pdf&amp;directory=Water%20Legislation&amp;">http://www.maji.go.tz/modules/documents/index.php?action=downloadfile&amp;filename=THE%20WATER%20RESOURCES%20MANAGEMENT%20ACT.pdf&amp;directory=Water%20Legislation&amp;</a>
Tanzania - Rukwa	Nkansi District Council (Cultivation of Agricultural Land) By-laws (G.N. No. 111 of 1994)	S 3: every resident who holds land in accordance with local customary law relating to land tenure shall, unless otherwise directed in writing by an authorized officer, cultivate and maintain an area of not less than one acre of such food or cash crops S 4: (1) the Council may give directions in writing relating to the type of cultivation, crops to be grown, use of manure and fertilizers, removal of old plants and weeds and maintenance and use of the land S 5: (1) every person who has cultivated any area under these by-laws such keep such area clean and free from weeds; (2) residents who find infection of insects, plant pest or disease shall promptly report such S 6: no resident shall fell crops for any purpose other than agricultural improvement or enhancement of the environment	<a href="http://faolex.fao.org/docs/pdf/tan5296.pdf">http://faolex.fao.org/docs/pdf/tan5296.pdf</a>
Tuvalu	Laws of Tuvalu Act 1987 (No. 8 of 1987)	This Act concerns law in general applicable in Tuvalu and gives a definition of customary law and other sources of law. The Act also defines powers of the Attorney-General in relation to applied law. Customary law comprises the customs and usages, existing from time to time, of the natives of Tuvalu. Schedule 1 to this Act has effect with respect to the determination and recognition of customary law. Customary law may be applied, among other things, to: questions relating land and the produce of land, including rights of hunting on, or gathering, or taking minerals, from, native land; (b) the ownership by custom of rights in, over or in connection with any area of the territorial sea or any lagoon, inland waters or foreshore, or in or on the seabed, including rights of navigation, fishing or gathering; and (c) the ownership by custom of water, or of rights in, over or to water.	<a href="http://faolex.fao.org/docs/texts/tuv74780.doc">http://faolex.fao.org/docs/texts/tuv74780.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
Tuvalu	Native Lands Ordinance 1956	<p>S 2: 'native land' means land owned by a native or natives; 'native lease' means a lease of native land to a native where the term of the lease does not exceed 21 years and where the land the subject of the lease does not exceed 5 acres, and includes a sub-lease</p> <p>S 4: (1) titles to native lands (a) registered by the Commission, and (b) registered by the court in pursuance of ss 14 and 19 shall be indefeasible</p> <p>S 5: (1) subject to this Ordinance, native land shall not be alienated, whether by sale, gift, lease or otherwise, to a person who is not a native; (2) this section shall in no way restrict the alienation of native land to the Crown, a council or society registered under the Cooperative Societies Ordinance</p> <p>S 12: (as amended in 2005) (1) the court shall adjudicate in accordance with the Land Code, or where the Code is not applicable, the local customary law, all cases concerning land, land boundaries and transfers of titles to native land</p> <p>S 14: the court may register any title to native land which it finds to have existed at the time of enquiry of the Commission, provided that no judgement of the Commission shall thereby be reversed</p> <p>S 15: the court shall be a court of probate in respect of native wills and shall have the power to adjudicate in accordance with native customary law on all cases arising from the administration of native estates</p> <p>S 17: the court shall adjudicate on all cases brought before it concerning the determination of native customary fishing rights</p> <p>S 30: no lease or sub-lease of any native land shall be valid until it has been approved and registered in accordance with the provisions hereinafter contained</p> <p>S 31: (1) A lease or sub-lease of native land, other than a native lease, shall require the approval of the Minister (further provisions on procedure)</p> <p>S 35: no native lease shall be assigned or transferred without approval of the court</p> <p>S 56: (1) determination of claim of unlawful occupation on native land</p> <p>Sch 2, S 4: (e) during the proceedings of the Lands Court, the president may discuss with the members of the court the native custom applicable. After hearing all evidence, the president shall summarise the facts and custom for the benefit of the members of the court</p>	<a href="http://faolex.fao.org/docs/texts/tuv35693.doc">http://faolex.fao.org/docs/texts/tuv35693.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
Uganda	Land Act 1998 (Act No. 16 of 1998)	<p>S 1: 'certificate of customary ownership' means a certificate issued under s 4; 'community means an indigenous community of Uganda as provided for in the 3rd Schedule to the Constitution, or any clan or subclan of such indigenous community communally occupying, using or managing land; 'customary tenure' means a system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons the incidents of which are described in s 3</p> <p>S 3: subject to s 237 of the Constitution, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the following land tenure systems - customary, freehold, mailo, and leasehold.</p> <p>S 4: (1) customary tenure is a form of tenure - (a) applicable to a specific area of land and a specific description or class of persons, (b) subject to s 28, governed by rules generally accepted as binding and authoritative by the class of persons to which it applies, (c) applicable to any persons acquiring land in that area, (d) subject to s 28, characterised by local customary regulation, (e) applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land, (f) providing for communal ownership and use of land, (g) in which parcels of land may be recognised as subdivisions belonging to a person, a family or a traditional institution, and (h) which is owned in perpetuity.</p> <p>S 5: (1) any person, family or community holding land under customary tenure or former public land may acquire a certificate of customary ownership in respect of that land in accordance with the provisions of this Act</p> <p>S 6: (1) on receipt of an application for a certificate of customary ownership the Committee shall - (a) determine all interests in the land, (b) demarcate rights of way and other easements, (c) adjudicate upon and decide in accordance with customary law, any question concerning the land referred to it by a person with an interest in the land, (d) record that if any person has exercised rights under customary law that should be recognised as ownership of that land</p> <p>S 9: (1) a certificate of customary ownership is conclusive evidence of the customary rights and interests specified in it, and the land shall continue to be occupied, used, regulated and any transactions undertaken in accordance with customary law; (2) a customary certificate of ownership shall confer on the holder the right to undertake any transactions in respect of that land which may include but is not limited to - (a) leasing, (b) permitting usufructuary rights, (c) mortgaging, (d) subdividing, (e) creating, altering or discharging any easement, (f) selling, (g) transferring in response to a court order, (h) disposing by will</p> <p>S 16: (1) A Communal Land Association may be formed for any purpose connected with communal ownership and management of land, whether under customary law or otherwise</p> <p>S 23: (1) where an Association holds land under a certificate of customary ownership or a freehold title on behalf of the community, the Association shall, where customary law makes provision for it, recognise that the land is occupied and used by individuals and families for their own purposes and benefits; (2) for the purpose of holding land under customary tenure, a family shall be deemed to be a legal person represented by the head of the family</p> <p>S 24: (1) an Association shall, when requested to do so by the community, set aside an area for common use by members of the group</p> <p>S 25: (1) an area set aside for common use shall be used and managed in accordance with the terms of a common land management scheme.</p> <p>S 27: (1) basic rights and duties of members of a community under a common land management scheme</p> <p>S 28: any decision taken in respect of land held under customary tenure shall be in accordance with custom, traditions and practices of the community</p> <p>S 30: (1) 'lawful occupant' means - (c) a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title</p> <p>S 42: (7) notwithstanding any provisions to the contrary in the Land Acquisition Act - (e) in the case of land occupied under customary tenure, in addition to compensation assessed under this section, there shall be paid a disturbance allowance</p> <p>S 89: (1) nothing in this Part shall be taken to prevent the exercise by traditional authorities of the functions of determining disputes over customary tenure</p>	<a href="http://faolex.fao.org/docs/pdf/uga19682.pdf">http://faolex.fao.org/docs/pdf/uga19682.pdf</a>
United Kingdom - Cayman Islands	Endangered Species Protection and Propagation Law, 1978 (No. 21 of 1978)	<p>S 4: s 3 (prohibition on importation/exportation of live or dead animals) has no application to the bringing into the Islands of turtles taken within the fishery limits of the Cayman Islands, if the taking is customary and traditional and the turtles are intended only for consumption by islanders.</p>	<a href="http://faolex.fao.org/docs/pdf/cay9865.pdf">http://faolex.fao.org/docs/pdf/cay9865.pdf</a>

Jurisdiction	Legislation	Scope of provision	Access
United States of America	Alien Tort Claims Act 28 U.S.C. § 1350	The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.	<a href="http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t26t28+3128+9++%28alien%20tort%20claims%29%20%20%20%20%20%20%20%20%20%20%20%20%20">http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t26t28+3128+9++%28alien%20tort%20claims%29%20%20%20%20%20%20%20%20%20%20%20%20%20</a>
United States of America	Auburn Indian Restoration Act 1994 (PL 103-434)	S 202: (a) Federal recognition of the tribe; (d) nothing in this title shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its members S 204: (a) the Secretary shall accept any real property located in Placer County for the benefit of the Tribe if conveyed to the Secretary free of adverse legal claims S 207: (a) upon completion of a tribal membership roll under s 205(a), the Secretary shall conduct an election for the purpose of adopting a constitution and bylaws for the Tribe; (b) election of tribal officials as per constitution	<a href="http://faolex.fao.org/docs/html/Usa11174.htm">http://faolex.fao.org/docs/html/Usa11174.htm</a>
United States of America	Endangered Species Act 1973	S 10: (e) (1) the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by— (A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; (3) As used in this subsection— (i) The term “subsistence” includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns	<a href="http://epw.senate.gov/es a73.pdf">http://epw.senate.gov/es a73.pdf</a>
United States of America	Hawaii Tropical Forest Recovery Act (Public Law 102-574)	S 4: (b) the Task Force shall submit an action plan that contains findings and recommendations for rejuvenating Hawaii's tropical forests, including findings and recommendations on- (6) traditional practices, uses, and needs of native Hawaiians in tropical forests	<a href="http://faolex.fao.org/docs/html/Usa5585.htm">http://faolex.fao.org/docs/html/Usa5585.htm</a>
United States of America	Hawaiian Islands National Marine Sanctuary Act (Subtitle C - Hawaiian Islands Humpback Whale Sanctuary) 1992	S 2306: (a) the Secretary shall develop a comprehensive management plan. Such comprehensive management plan shall - (1) facilitate all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of protection of humpback whales and their habitat	<a href="http://faolex.fao.org/docs/html/Usa5593.htm">http://faolex.fao.org/docs/html/Usa5593.htm</a>
United States of America	National Indian Forest Resources Management Act 1990 (PL 101-630)	S 303: the purposes of this title are to: (1) allow the Secretary of the Interior to take part in the management of Indian forest lands, with the participation of the lands' beneficial owners; (2) clarify the authority of the Secretary to make deductions from the proceeds of sale of Indian forest products for forest land management activities; (4) provide for the authorisation of necessary appropriations to carry out this title for the protection, conservation, utilisation, management, and enhancement of Indian forest lands S 304: (3) 'Indian forest land' means Indian lands, including commercial and non-commercial timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by forest cover; (10) 'Indian land' means land title to which is held by - (A) the US in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member or a federally-recognised Indian tribe, or an Indian tribe, or (B) an Indian, an individual of Indian or Alaskan Native ancestry etc S 309: unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest lands, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest lands.	<a href="http://faolex.fao.org/docs/html/Usa5785.htm">http://faolex.fao.org/docs/html/Usa5785.htm</a>
United States of America - Guam	Chamorro Land Trust Commission - Chapter 75 of 21 GCA "Real Property"	S 75105: all available lands shall immediately assume the status of Chamorro homelands and shall be under the control of the commission of Available Lands S 75107: the Commission is authorised to lease to native Chamorros the right to use and occupy a tract of Chamorro homelands, within an acreage limit S 75108: mandatory conditions of lease - including payment of tokenistic rent and obligation to use or cultivate	<a href="http://faolex.fao.org/docs/pdf/gum54216.pdf">http://faolex.fao.org/docs/pdf/gum54216.pdf</a>

Jurisdiction	Legislation	Scope of provision	Access
United States of America - Hawaii	Constitution	Art XII, S 7: the State shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possess by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian islands prior to 1778, subject to the right of the State to regulate such rights	<a href="http://hawaii.gov/lrb/con/">http://hawaii.gov/lrb/con/</a>
Vietnam	Order No. 23/2003/L-CTN on the promulgation of Land Law No. 13/2003/QH11	Art 9: land users defined in this law include: (3) population communities, including communities of Vietnamese living in the same villages, hamlets or similar population quarters having the same customs and practices or the same descents, that are assigned land or have the land use rights recognised, by the State Art 43: (1) the State shall recover land without payment of compensation in the following circumstances- (c) agricultural land used by a community of citizens Art 48: (3) in cases where a land plot is under the common use right of a population community, the land use right certificate shall be granted to the population community and handed to the lawful representative of such population community Art 50: (8) a population communities which currently uses land containing a building being communal house, temple, shrine, pagoda, worship hall or family shrine shall be issued a certificate of land use right upon satisfying certain conditions Art 66: land users shall be permitted to use land on a stable and long term basis in the following cases: (2) agricultural land used by a population community as provided for in art 71(4) Art 71: (4) the agricultural land used by population communities is prescribed as follows: (a) land assigned by the State to them for use to conserve the national identities in association with the customs and practices of various ethnic minority groups; (b) the population communities assigned agricultural land have responsibility to protect the assigned land areas, may use land for agricultural production in combination with aquaculture and must not use such land for other purposes Art 117: (1) population communities shall have the rights and obligations prescribed in arts 105 (general rights of land users) and 107 (general obligations of land user); (2) population communities must not exchange, transfer, lease, present or donate the land use rights, nor mortgage or provide guarantee with them	<a href="http://faolex.fao.org/docs/pdf/vie43122.pdf">http://faolex.fao.org/docs/pdf/vie43122.pdf</a>
Zambia	Forests Act 1999 (Act No. 7 of 1999)	S 2: 'local community' means the residents within or adjacent to a Local Forest, Joint Forest Management Area or open area who by virtue of their rights over land including customary land tenure invest in and derive benefits from the sustainable utilisation of forest resources in their area; 'traditional institution' means any institution recognised under African customary law to service the Chief or local community in the area S 3: the ownership of all trees standing on customary areas etc is vested in the President until lawfully transferred or assigned under this or other Act S 38: (1) major forest produce in customary areas shall be conserved for the use and benefit of the inhabitants of such, provided that trees may be felled by and for such inhabitants for the purpose of agriculture S 39: prohibition on manufacturing wood into charcoal in or from any customary area without a licence (except for personal use etc) S 40: offence to: (1) without a licence, fell, cut, collect etc any major forest produce in or from any customary area; (2) without a licence sell or otherwise deal in major forest produce from any customary area (except for personal use etc) S 41: subject to this Act, control and management of licenced felling, cutting, taking and removal of major forest produce in customary areas shall vest in the Commission	<a href="http://faolex.fao.org/docs/texts/zam21483.doc">http://faolex.fao.org/docs/texts/zam21483.doc</a>

Jurisdiction	Legislation	Scope of provision	Access
Zambia	Land Act 1995 (Cap. 184)	<p>S 1: 'customary area' means, notwithstanding s 32, the area described in the Schedules to the Zambia (State Land and Reserves) Orders and the Zambia (Trust Land) Orders</p> <p>S 3: (4) notwithstanding subs (3) (alienation of land to non-Zambians), the President shall not alienate any land in an area where land is held under customary tenure- (a) without taking into consideration local customary law on land tenure, (b) without consulting the Chief and the local authority, (c) without consulting any other person whose interest might be affected</p> <p>S 4: (1) where a person has the right of use and occupation of land under customary law and wishes to convert such right into leasehold tenure, no consideration shall be paid for such conversion</p> <p>S 7: (1) notwithstanding s 32(2) but subject to s 9, every piece of land in a customary area which immediately before this Act was held by any person under customary tenure shall continue to be so held and any other law shall not be construed so as to infringe on any customary right enjoyed by that person; (2) the rights and privileges of any person to hold land under customary tenure shall be recognised and any such holding under customary law shall not be construed as an infringement of any provision of this Act or any other law</p> <p>S 8: (1) any person who holds land under customary tenure may convert it into a leasehold tenure not exceeding 99 years; (2) the conversion of rights shall have effect only after the approval of the chief and the local authorities</p>	<a href="http://faolex.fao.org/docs/pdf/zam9900.pdf">http://faolex.fao.org/docs/pdf/zam9900.pdf</a>
Zimbabwe	Customary Law and Local Courts Act 1990 [Chapter 7:05]	<p>S 2: 'customary law' means the customary law of the people of Zimbabwe, or of any section or community of such people, before 10th June 1981m as modified and developed since that date</p> <p>S 3: (1) subject to this and any other Act, unless justice otherwise requires- (a) customary law shall apply in any civil case where- (i) the parties have expressly agreed that it should, (ii) it appears that the parties have agreed it should, (iii) it is just and proper that it should; (2) detail for determining (1)(a)(ii)</p> <p>S 8: in any case where customary law is applicable and the parties are connected with different systems of customary law, the court shall apply the customary law by which the parties have agreed their obligations should be regulated, or in the absence of such the customary law with which the case and parties have closest connection, and if that is not ascertainable the system which the court considers it would be just and fair to apply</p> <p>S 9: if a court has doubt as to the existence or content of a rule of customary law, after considering submissions from the parties, it may consult reported cases, text books and other sources and receive opinions</p> <p>S 15: subject to this and any other Act, a local court shall have jurisdiction to hear and determine any civil case in which customary law is applicable where- (a) the defendant is normally resident within the area of jurisdiction, or (b) the cause of action arose within such area, or (c) the defendant consents to the jurisdiction</p> <p>S 16: (1) a local court shall have no jurisdiction- (a) where the claim is not determinable by customary law etc</p> <p>S 17: subject to this and any other Act, a local court may- (d) order the payment of penal damages where customary law so permits or requires</p> <p>S 20: (1) subject to this Act, the procedure and law of evidence in local courts shall be regulated by customary law and not by the general law, and shall be in as simple and informal a manner as is reasonably possible</p>	<a href="http://faolex.fao.org/docs/pdf/zim93536.pdf">http://faolex.fao.org/docs/pdf/zim93536.pdf</a>
Zimbabwe	Magistrates Court Act 1898 [Chapter 7:10]	<p>S 4: (2)(a) in any matter determine according to customary law, the proceedings may be conducted in any other language agreed upon</p> <p>S 11: every court shall have in all civil cases, whether determinable by the general law or customary law, the following jurisdiction...</p>	<a href="http://faolex.fao.org/docs/pdf/zim93537.pdf">http://faolex.fao.org/docs/pdf/zim93537.pdf</a>

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## Annex C – Bibliography of literature



Citation	Description	Access
Abel, R. L. (1969). A Bibliography of the Customary Laws of Kenya. <i>African Law Studies</i> 2: 1-48	Bibliography of customary law in Kenya, particularly thorough in the area of customary wrongs	Available through subscription to online databases
Ahren, M. (2004). 'Indigenous Peoples' Culture, Customs, and Traditions and Customary Law - The Saami People's Perspective'. <i>Arizona Journal of International and Comparative Law</i> 21(1): 63-112	This Article will initially describe some of the distinct customs, traditions, and customary laws of the Saami people relating to use of land and natural resources. It will outline how the colonizing peoples initially respected the Saami people's legal system and how the laws of the different societies co-existed. This Article will then investigate why the non-Saami society gradually came to disrespect the Saami people's customary land, waters, and natural resource use, as well as the customary law corresponding thereto. The Article will outline what effects this has had, and continues to have, on the Saami people's ability to continue to exist as a distinct people in their traditional territories. The last part summarizes the types of conflicts that can be attributed to the lack of respect for Saami customary law and offers some solutions and suggestions as to how these conflicts can be remedied.	<a href="http://www.ajicl.org/AJICL2004/vol211/Ahren.pdf">http://www.ajicl.org/AJICL2004/vol211/Ahren.pdf</a>
Alden Wily, L. (2000). 'Forest law in eastern and southern Africa: moving towards a community-based forest future?'. <i>Unasylva</i> 203: 19-26	This article focuses on how new forest laws provide for the involvement of people who live within or adjacent to natural forests in determining the future of the forest. These forest communities are generally rural, poor and dependent on forests (predominantly woodland, dominated by the miombo type) as integral to their agricultural or pastoral livelihood. The extent to which their land base includes rights over local forest is a matter of increasing concern to such communities.	<a href="http://www.fao.org/docrep/x8080e/x8080e04.htm#P0_0">http://www.fao.org/docrep/x8080e/x8080e04.htm#P0_0</a>
Alden Wily, L. (2004). <i>Can We Really Own the Forest? A Critical Examination of Tenure Development in Community Forest in Africa</i> . Paper 251d, Tenth Biennial Conference of the International Association for the Study of Common Property, Oaxaca, Mexico, 9-13 August 2004	This paper looks at how far new forest policies are permitting communities to found their management roles on resource ownership and the support this is gaining from the land sector. The conclusion drawn is positive; that significant opportunities for communities to secure common tenure are emerging, primarily through improvement in the legal status of customary land rights.	<a href="http://pdf.wri.org/ref/alden_wily_04_can_own_forest_critical.pdf">http://pdf.wri.org/ref/alden_wily_04_can_own_forest_critical.pdf</a>
Anaya, J. (2004). <i>Indigenous Peoples in International Law</i> , Second edition. Oxford: Oxford University Press.	This book incorporates references to all the latest treaties and recent developments in the international law of indigenous peoples. It demonstrates that, while historical trends in international law largely facilitated colonization of indigenous peoples and their lands, modern international law's human rights program has been modestly responsive to indigenous peoples' aspirations to survive as distinct communities in control of their own destinies. This book provides a theoretically grounded and practically oriented synthesis of the historical, contemporary and emerging international law related to indigenous peoples. It will be of great interest to scholars and lawyers in international law and human rights, as well as to those interested in the dynamics of indigenous and ethnic identity.	Preview only: <a href="http://books.google.com/books?id=sb-qGM5-gB8C&amp;printsec=frontcover&amp;dq=Indigenous+Peoples+in+International+Law&amp;source=bl&amp;ots=ip-V7Zmya2&amp;sig=eFOO2ykYXQl4BNcmrgbgZIVwJFc&amp;hl=en&amp;ei=THwOTZDkA4KB8gbd44yIDg&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=3&amp;ved=0CDIQ6AEwAg#v=onepage&amp;q&amp;f=false">http://books.google.com/books?id=sb-qGM5-gB8C&amp;printsec=frontcover&amp;dq=Indigenous+Peoples+in+International+Law&amp;source=bl&amp;ots=ip-V7Zmya2&amp;sig=eFOO2ykYXQl4BNcmrgbgZIVwJFc&amp;hl=en&amp;ei=THwOTZDkA4KB8gbd44yIDg&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=3&amp;ved=0CDIQ6AEwAg#v=onepage&amp;q&amp;f=false</a>
Anderson, J., Clement, J., & Crowder, L. V. (1998). 'Accommodating conflicting interests in forestry— concepts emerging from pluralism'. <i>Unasylva</i> 194: 3–10.	This article discusses what pluralism is, why it is potentially important, how it can be used for a better understanding of dynamics of sustainable forestry and rural development and what operational tools exist that might be particularly well equipped to deal with the seemingly growing set of pluralistic situations.	<a href="http://www.fao.org/docrep/w8827e/w8827e03.htm#accommodating%20conflicting%20interests%20in%20forestry%20concepts%20emerging%20from%20pluralism">http://www.fao.org/docrep/w8827e/w8827e03.htm#accommodating%20conflicting%20interests%20in%20forestry%20concepts%20emerging%20from%20pluralism</a>

Citation	Description	Access
Antwi, Y. (2006). <i>Strengthening Customary Land Administration: A DFID/World Bank Sponsored Project in Ghana</i> . 5th FIG Regional Conference, Accra, Ghana, March 8-11 2006	Land administration in Ghana is going through an intensive reform process backed by a consortium of donors. An aspect of this reform is the establishment and strengthening of Customary Land Secretariats (CLS). This paper discusses the project aims, expected benefits and potential sources that could blunt project outcomes. It goes on to detail the strategy adopted to implement the project and share some of the experiences to date. It concludes with an open question regarding the ability of the implementing agency.	<a href="http://www.fig.net/pub/accra/papers/ts05/ts05_01_antwi.pdf">http://www.fig.net/pub/accra/papers/ts05/ts05_01_antwi.pdf</a>
Assembe Mvondo, S. (2009). 'Sustainable forest management practice in Central African states and customary law'. <i>International Journal of Sustainable Development and World Ecology</i> 16(4): 217–227.	This paper focuses on the practice of Central African States in sustainable forest management, especially statement of principles, sub-regional treaty and domestic legislation. The analysis shows that their practice fulfils all the requirements in order to be regarded as regional custom. Therefore, principles and state practices of SFM can thus be considered legally binding for this sub-region, despite some major implementation shortcomings.	Available through subscription to online databases
Babiker, M. (2008). <i>Communal Land Rights and Peace-building in North Kordofan: Policy and Legislative Challenges</i> . Bergen: Chr. Michelsen Institute	The focus of this paper is on the policy and legislative challenges raised by the commons in an era where many vocal actors see privatisation as the only way forward (Cotula et al., eds., 2005). Such challenges are examined at different levels – local (e.g. local agreements for the shared management of natural resources) and national (government policies, legislation).	<a href="http://www.cmi.no/sudan/doc/?id=966">http://www.cmi.no/sudan/doc/?id=966</a>
Bank, L. and Southall, R. (1996). 'Traditional Leaders in South Africa's New Democracy'. <i>Journal of Legal Pluralism</i> 37-38: 407-430	Whether embedded within a constitution or merely exercised informally, traditional rule tends to complement, sustain and legitimate the modern state rather than undermining it: "Mixed government implies cooperative interaction among distinct and relatively autonomous governmental institutions." Consequently, rather than traditional authority contradicting democracy, it can provide the bedrock upon which to construct new and experimental governments, including constitutional democracies.	<a href="http://www.jlp.bham.ac.uk/volumes/37-38/banksouthall-art.pdf">http://www.jlp.bham.ac.uk/volumes/37-38/banksouthall-art.pdf</a>
Bavinck, M. (1998). "A Matter of Maintaining Peace": State accommodation to subordinate legal systems- the case of fisheries along the Coromandel Coast of Tamil Nadu, India'. <i>Journal of Legal Pluralism</i> 40: 151-170	This article analyses the pattern of state adjustment to another strong legal system in its social field. The setting is the Coromandel Coast of Tamil Nadu, and the issue at hand is the regulation of common pool marine fisheries. In a case study of a dispute involving fishermen law, this article asks why the state, in this case the Fisheries Department, has not established a consistent law practice either by imposing state fisheries law or by integrating fishermen law into the formal system.	<a href="http://www.jlp.bham.ac.uk/volumes/40/bavinck-art.pdf">http://www.jlp.bham.ac.uk/volumes/40/bavinck-art.pdf</a>
Becker, J. C. (1989) <i>Seymour's Customary Law in South Africa</i> , 5th edition, Cape Town: Juta & Co. Ltd.	Abstract unavailable	Unable to find internet access
Benjamin, C. E. (2008). 'Legal Pluralism and Decentralization: Natural Resource Management in Mali.' <i>World Development</i> 36(11): 2255-2275	In Mali, decentralization has superimposed modern legal institutions on community institutions. The ambiguous relationships between them can undermine both the authority of nascent local governments and the performance of customary institutions. Legal pluralism— the coexistence and interaction of multiple normative orders with different sources of legitimacy and authority—helps explain the dynamic nature of local institutions under decentralization. This article examines the experiences of three Malian communities with decentralized natural resource management: one maintains autonomy from government, another engaged its local government, and a third negotiated a multi-stakeholder agreement—a local convention.	Available through subscription to online databases

Citation	Description	Access
<p>Bennet, T. W. and Vermuelen, T. (1980) 'Codification of Customary Law.' <i>Journal of Africa Law</i> 24(2): 206-219</p>	<p>During the past 50 years, the study of African customary law has been enthusiastically pursued. The growing awareness of this subject has, at the same time, stimulated a critical awareness of the problem of its place in the legal system of an African state. With the attitudes of modern African nations, the place of customary law is necessarily an ambiguous one. Because the colonial governments' application of customary law and European law was determined, primarily, by the race of the litigants, this was frequently perceived as discriminatory and, hence, antithetical to the views of African nationalism. On the other hand, it is true that customary law, the law of the African people, reflects the traditional African culture, whereas the imported systems of Western European law reflect European values and attitudes. At an even more fundamental level, customary law is regarded as representing the old social order. As such, it is often perceived to be in opposition to the new social order represented by the European legal systems. The latter are usually more in keeping with the demands of modern society, particularly in the public and commercial sphere, whereas customary law is suited, rather, to the simple, face-to-face societies of the eighteenth and nineteenth centuries.</p>	<p>Abstract only:  <a href="http://journals.cambridge.org/action/displayAbstract?jsessionid=BE38F7601EDB8AB579527A0FB1131F69.tomcat1?fromPage=online&amp;aid=5240944">http://journals.cambridge.org/action/displayAbstract?jsessionid=BE38F7601EDB8AB579527A0FB1131F69.tomcat1?fromPage=online&amp;aid=5240944</a></p>
<p>Berkes, F., Folke, C. and Colding, J. (2000). <i>Linking Social and Ecological Systems: Management practices and social mechanisms for building resilience</i>. Cambridge: Cambridge University Press</p>	<p>See particularly:  Ch 9: Alcorn, J. B. and Toledo, V. M. Resilient resource management in Mexico's forest ecosystems  Ch 10: Niamir-Fuller, M. The resilience of pastoral herding in Sahelian Africa</p>	<p>Note: preview only  <a href="http://books.google.com/books?id=CueiTFXCRXQC&amp;printsec=frontcover&amp;source=gbs_atb#v=onepage&amp;q&amp;f=false">http://books.google.com/books?id=CueiTFXCRXQC&amp;printsec=frontcover&amp;source=gbs_atb#v=onepage&amp;q&amp;f=false</a></p>
<p>Besson, J. (1999). 'Folk Law Legal Pluralism in Jamaica: A view from the Plantation-Peasant Interface'. <i>Journal of Legal Pluralism</i> 43: 31-56</p>	<p>This article examines the appropriation and overturning of aspects of the colonially derived legal system by folk law in Jamaica, and the implications of this process for the analysis of legal pluralism in plantation societies.</p>	<p><a href="http://www.jlp.bham.ac.uk/volumes/43/besson-art.pdf">http://www.jlp.bham.ac.uk/volumes/43/besson-art.pdf</a></p>
<p>Bilal, A., Haque, H. and Moore, P. (2003). <i>Customary Laws: Governing Natural Resource Management in the Northern Areas</i>. Karachi, Pakistan: IUCN (ELP)</p>	<p>The objective of this survey and analysis was to begin to draw out and understand the issues at the interface of customary law governing the use and management of natural resources in Northern Areas and statutory laws applied for the same purpose. The goal of this initiative is to provide the basis for bringing statutory and customary laws regarding use, management and conservation of natural resources in the Northern Areas into harmony with each other.</p>	<p><a href="http://data.iucn.org/dbtw-wpd/edocs/2003-105.pdf">http://data.iucn.org/dbtw-wpd/edocs/2003-105.pdf</a></p>
<p>Borrows, J. (2002) <i>Recovering Canada: the Resurgence of Indigenous Law</i>. Toronto: University of Toronto Press</p>	<p>This book suggests how First Nations laws could be applied by Canadian courts, and tempers this by pointing out the many difficulties that would occur if the courts attempted to follow such an approach. By contrasting and comparing Aboriginal stories and Canadian case law, and interweaving political commentary, this book argues that there is a better way to constitute Aboriginal / Crown relations in Canada. It suggests that the application of Indigenous legal perspectives to a broad spectrum of issues that confront us as humans will help Canada recover from its colonial past, and help Indigenous people recover their country. The book concludes by demonstrating how Indigenous peoples' law could be more fully and consciously integrated with Canadian law to produce a society where two world views can co-exist and a different vision of the Canadian constitution and citizenship can be created.</p>	<p>Preview only:  <a href="http://books.google.com/books?id=3c0x55W22qoC&amp;printsec=frontcover&amp;dq=Recovering+Canada:+the+Resurgence+of+Indigenous+Law&amp;source=bl&amp;ots=MxX5_y18ci&amp;sig=uXF6zBG988GAsiWgkDt-Itz1Hd8&amp;hl=en&amp;ei=AH4OTeP1KYH78AbRqYmTDg&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=3&amp;ved=0CC4Q6AEwAg#v=onepage&amp;q&amp;f=false">http://books.google.com/books?id=3c0x55W22qoC&amp;printsec=frontcover&amp;dq=Recovering+Canada:+the+Resurgence+of+Indigenous+Law&amp;source=bl&amp;ots=MxX5_y18ci&amp;sig=uXF6zBG988GAsiWgkDt-Itz1Hd8&amp;hl=en&amp;ei=AH4OTeP1KYH78AbRqYmTDg&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=3&amp;ved=0CC4Q6AEwAg#v=onepage&amp;q&amp;f=false</a></p>

Citation	Description	Access
<p>Brahy N. (2006) 'The Contribution of Databases and Customary Law to Protection of Traditional Knowledge.' <i>International Social Sciences Journal</i> 58(188): 259-282</p>	<p>The current situation of traditional knowledge (TK) is somewhat paradoxical. At the same time as it is eroding, it is becoming the object of growing interest by scientists. In this context, TK holders complain about the misappropriation of their knowledge and formulate two sets of claims. First, they ask for some protection of their intellectual property. Second, they demand the respect of their customary laws, arguing that they do not ask to be granted new rights but to have their existing rights respected. Regarding the first claim, little progress has been made after many years of debate; probably because participants rely on right-based justifications that offer little guidance to design effective and transferable property rights. I suggest following a double approach: first, looking at the practices of TK holders, second, using a utilitarian justification that provides useful insights to design effective property rights. I conclude that there are strong arguments in favour of the creation of a database of traditional knowledge. Regarding the second claim, no progress has been made because it is perceived as a political demand for self-determination. I also suggest adopting a utilitarian approach that makes us regard this claim as a demand of articulation between custom or norms-based systems of innovation and the legal system of intellectual property law. This enables us to look at solutions that have already been tested for other norms-based systems of innovation that also have had to organise their insertion in the legal system of intellectual property.</p>	<p>Available through subscription to online databases</p>
<p>Bruns, B. R. and Meizen-Dick, R. S. (2001). 'Water rights and legal pluralism: four contexts for negotiation'. <i>Natural Resources Forum</i> 25:1-10</p>	<p>Increasing water scarcity is increasing pressure on water management institutions, particularly in the area of water rights. A common response is to formalise water tenure, one of several options for securing access and resolving conflicts concerning water allocation. This article looks at four contexts where negotiation, self governance and concepts of legal pluralism may help improve water resource management. Existing users and potential new users need to negotiate before water resources are developed. Users can participate in forums with authority to solve basin management problems through self-governance. Negotiated water transfers offer an alternative to water acquisition by expropriation.</p>	<p>Available through subscription to online databases</p>
<p>Burchi, S. (2005). <i>The Interface Between Customary and Statutory Water Rights - A statutory perspective</i>. FAO Legal Papers Online #45</p>	<p>This paper discusses salient features of customary water rights. It then analyses points of intersection and interaction between customary and statutory water law and water rights and legislative approaches reconciling the two.</p>	<p><a href="http://www.fao.org/legal/prs-ol/lpo45.pdf">http://www.fao.org/legal/prs-ol/lpo45.pdf</a></p>

Citation	Description	Access
<p>Caillaud, A., Boengkih, S., Evans-Illidge, E., Genolagani, J., Havemann, P., Henao, D., Kwa, E. et al. (2004) 'Tabus or not Taboos? How to use traditional environmental knowledge to support sustainable development of marine resources in Melanesia.' <i>SPC Traditional Marine Resource Management and Knowledge Information Bulletin</i> 17: 14-35</p>	<p>The case studies from the workshop on Traditional Knowledge and Coastal Resource Conservation for Countries and States of the Melanesian Spearhead Group explore the links between customary laws — especially those relating to fisheries management — and existing government regulations, with a view to ensuring that government regulations take full account of customary practices. Melanesian case studies are complemented with case studies from other regions, which provide useful examples. Case studies:</p> <ul style="list-style-type: none"> <li>• Merging traditional resource management approaches and practices with the formal legal system in Vanuatu</li> <li>• Traditional management of marine resources in Palau</li> <li>• The Loyalty Islands environment charter in Kanaky-New Caledonia</li> <li>• Fisheries bylaws in Samoa</li> <li>• Traditional law and the environment in the Solomon Islands</li> <li>• Customary law on Malo, South Santo, Vanuatu, and the protection of the marine environment</li> <li>• <i>Kaitiakitanga</i>: customary fisheries management in New Zealand</li> <li>• Pohnpei watershed management: A case study of legal and institutional reform for co-management in the Pacific</li> <li>• Community involvement in the implementation of ocean policies: The Fiji Locally Managed Marine Areas network</li> <li>• Traditional and modern law: A marriage in progress – The draft Talasea Local Government Marine Environment Law (Papua New Guinea)</li> <li>• Biodiversity and sustainable use of marine biodiversity in PNG: Policy and legal implications</li> <li>• Towards legal protection of traditional knowledge: Lessons from Peru</li> <li>• The role of customary law and practice in international ABS and TK governance</li> </ul>	<p><a href="http://www.spc.int/coastfish/News/Trad/17/Traditional17.pdf">http://www.spc.int/coastfish/News/Trad/17/Traditional17.pdf</a></p>
<p>Canadian Council of International Law (1996). <i>Global Forests and International Environmental Law</i>. International Environmental Law and Policy Series. London: Kluwer Law International</p>	<p>See in particular:  Ch 2: A conceptual framework for an international Forests Convention: Customary law and emerging principles  Ch 8: International legal instruments and institutional arrangements: A discussion paper</p>	<p>Note: abstract and link to purchase full text only  <a href="http://www.cababstractsplus.org/abstracts/Abstract.aspx?AcNo=19960608753">http://www.cababstractsplus.org/abstracts/Abstract.aspx?AcNo=19960608753</a></p>
<p>Care, J. C. and Zorn, J. G. (2001). 'Statutory Developments in Melanesian Customary Law'. <i>Journal of Legal Pluralism</i> 46: 50</p>	<p>This Article will first briefly review the colonial and post-colonial history that led to the passage of Papua New Guinea's Underlying Law Act and Solomon Islands' Customs Recognition Act. It will then analyse the Acts in some detail. Along the way, the authors venture some guesses as to why the two Parliaments have produced such different responses to similar problems of pluralism.</p>	<p><a href="http://www.jlp.bham.ac.uk/volumes/46/corrinczorn-art.pdf">http://www.jlp.bham.ac.uk/volumes/46/corrinczorn-art.pdf</a></p>
<p>Castilleja, G. (1993). 'Changing trends in forest policy in Latin America: Chile, Nicaragua and Mexico'. <i>Unasylva</i> 175:</p>	<p>An analysis of changes in forest policies in three Latin American countries which are largely the result of changing market situations, increased environmental sensitivity and consciousness of the rights of indigenous landholders.</p>	<p><a href="http://www.fao.org/docrep/v1500e/v1500e07.htm#changing%20trends%20in%20forest%20policy%20in%20latin%20america:%20chile,%20nicaragua%20and%20mexico">http://www.fao.org/docrep/v1500e/v1500e07.htm#changing%20trends%20in%20forest%20policy%20in%20latin%20america:%20chile,%20nicaragua%20and%20mexico</a></p>
<p>Chakma, B. et al. n.d. <i>Conflict into Opportunities: Towards Forest Governance in Chittagong Hill Tracts (A case study from Bangladesh)</i> accessed 29 June 2010 at <a href="http://www.recoftc.org/site/fileadmin/docs/Events/RR1_Conference/Session_3/Poster_Notes/B._Chakma_3.1.doc">http://www.recoftc.org/site/fileadmin/docs/Events/RR1_Conference/Session_3/Poster_Notes/B._Chakma_3.1.doc</a></p>	<p>Examines forest governance in the Chittagong Hill Tracts of Bangladesh</p>	<p><a href="http://www.recoftc.org/site/fileadmin/docs/Events/RR1_Conference/Session_3/Poster_Notes/B._Chakma_3.1.doc">http://www.recoftc.org/site/fileadmin/docs/Events/RR1_Conference/Session_3/Poster_Notes/B._Chakma_3.1.doc</a></p>

Citation	Description	Access
Chanwai, K. and Richardson, B. (1998). 'Re-working Indigenous Customary Rights? The Case of Introduced Species'. <i>New Zealand Journal of Environmental Law</i> 2: 157-185	This article explores the rights indigenous peoples may have to access and manage introduced species. It also canvasses possible institutional models to reconcile indigenous peoples' claims with other broader social, economic and environmental concerns.	Note: abstract and link to purchase full text only <a href="http://search.informit.com.au/documentSummary;dn=377274123059064;res=IELHSS">http://search.informit.com.au/documentSummary;dn=377274123059064;res=IELHSS</a>
Chauveau, J. 2003. <i>Rural Land Plans: Establishing relevant systems for identifying and recording customary rights</i> . Drylands Issue Paper E122. London: IIED	Can identifying and recording customary rights contribute to the securing of these rights? This paper looks at this question by describing the aims and content of rural land plan tools, looking at experiences in different countries and seeing how they contribute to securing land tenure. Case studies are from Côte d'Ivoire, Burkina Faso, Benin and Guinea.	<a href="http://www.iied.org/pubs/pdfs/9297IIED.pdf">http://www.iied.org/pubs/pdfs/9297IIED.pdf</a>
Christy, L. et al. (2007). <i>Forest Law and Sustainable Development: Addressing Contemporary Challenges Through Legal Reform</i> . Washington, D.C.: The World Bank	This study is intended to be a systematic and practical guide to basic features of modern forestry legislation. It identifies a range of issues that should be considered in assessing the adequacy of forest laws and presents options for addressing those issues in ways that may improve the effectiveness of law as a foundation for sustainable forest management. Ch 3 includes a section on customary or community-based tenure	<a href="http://books.google.com/books?id=KDcR11Nj9n0C&amp;pg=PA37&amp;dq=customary+law+forest&amp;hl=en&amp;ei=Mr4pTImMHM2xrAe07J11&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=2&amp;ved=0CC0Q6AEwAQ#v=onepage&amp;q=customary%20law%20forest&amp;f=false">http://books.google.com/books?id=KDcR11Nj9n0C&amp;pg=PA37&amp;dq=customary+law+forest&amp;hl=en&amp;ei=Mr4pTImMHM2xrAe07J11&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=2&amp;ved=0CC0Q6AEwAQ#v=onepage&amp;q=customary%20law%20forest&amp;f=false</a>
Clark, S.D. (1990). 'Tensions between Water Legislation and Customary Rights'. <i>Natural Resources Journal</i> 30(3): 503-520	The tension between customary law and modern systems arises from their different notions of the private and public domains; their different ideas of ownership and its attributes	<a href="http://lawlibrary.unm.edu/nrj/30/3/04_clark_tensions.pdf">http://lawlibrary.unm.edu/nrj/30/3/04_clark_tensions.pdf</a>
Commission on Legal Pluralism (2008). <i>The Commission's list of Panels and Paper Proposals</i> . For Conference (July 15-23 2008: Kunming).	Contains numerous paper proposals, many of which relate to customary law	<a href="http://www.commission-on-legal-pluralism.ch/List_of_organisational_session.pdf">http://www.commission-on-legal-pluralism.ch/List_of_organisational_session.pdf</a>
Conway, D. M. (2009). 'Indigenizing Intellectual Property Law: Customary Law, Legal Pluralism, and the Protection of Indigenous Peoples' Rights, Identity, and Resources'. <i>Texas Wesleyan Law Review</i> 15: 207-256	When this article promotes its theme of indigenizing intellectual property law, it means to apply legal pluralism to justify employment of Indigenous law as a primary source of law to begin the development of a sui generis legal system to bring to the fore essential protections for Indigenous knowledge, tangible and intangible cultural materials and artefacts, secret and sacred information and know-how, cultural expressions, and the biogenetic resources justly owned and possessed by Indigenous Peoples. By urging adoption of the indigenizing paradigm, this article implies that the current and most widely used and recognized laws governing intellectual property are, in their current form, incapable and at times inconsistent with protecting the rights and interests of Indigenous Peoples in their resources and intangible assets that have, through time, putatively derived from their origins, their interactions with their environment, their adaptations to the surrounding world, and their cosmology and creation stories.	<a href="http://indigenouspeoplesissues.com/attachments/4686_Indigenization_IPL.pdf">http://indigenouspeoplesissues.com/attachments/4686_Indigenization_IPL.pdf</a>
Corbett, A. and Jones, B. T. B. (2000). <i>The legal aspects of Governance in CBNRM in Namibia</i> . Paper prepared for the CASS/PLAAS Second Regional Meeting, University of the Western Cape, 16-17 October 2000	This paper discusses the legal framework for community based natural resource management, including customary law, communal land, wildlife, forestry, water, inland fisheries and community based tourism. It also discusses existing institutional arrangements for natural resource management, including government and traditional authorities	<a href="http://www.cbnrm.net/pdf/corbett_001.pdf">http://www.cbnrm.net/pdf/corbett_001.pdf</a>

Citation	Description	Access
Corrin Care, J. (2000) 'The Status of Customary Law in Fiji Islands after the Constitutional Amendment Act 1997.' <i>Journal of South Pacific Law</i> 4	This paper compares the recognition given to customary law in the constitutions of the member countries of the University of the South Pacific and of Papua New Guinea. It then examines the problems involved in formal recognition, and discusses whether those problems explain the motivation behind the withdrawal of recognition of customary law by the 1997 Act. The paper also considers the consequences that the repeal of this important part of the constitution will have and the significance of section 186.	<a href="http://www.paclii.org/journals/fj/SPL/vol04/1.shtml">http://www.paclii.org/journals/fj/SPL/vol04/1.shtml</a>
Cotula, L. (ed.) (2007). <i>Changes in 'Customary' Land Tenure Systems in Africa</i> . London: IIED and FAO	Although they claim to draw their legitimacy from "tradition" and are commonly referred to as "customary", local tenure systems have been profoundly changed by decades of colonial and post-independence government interference, and are continually adapted as a result of social, economic, political and cultural change. As land constitutes the main livelihood basis for a large portion of the rural population in Africa, changes in tenure systems have important implications for the livelihoods of resource users. This study explores changes in customary land tenure systems in Africa, identifies the factors driving such changes, analyses their livelihood implications and draws lessons for development policies and programmes.	<a href="http://www.iied.org/pubs/pdfs/12537IIED.pdf">http://www.iied.org/pubs/pdfs/12537IIED.pdf</a>
Cotula, L. and Cisse, S. (2006). 'Changes in 'Customary' Resource Tenure Systems in the Inner Niger Delta, Mali'. <i>Journal of Legal Pluralism</i> 52: 1-29	This paper explores change in customary resource tenure systems and in their relations with statutory law regimes, focusing on a case study from the Inner Niger Delta, Mali. It discusses changes in customary systems for managing grazing and agricultural lands in the delta. Section 2 recalls some general characteristics of customary resource tenure systems in Africa, and draws insights from the literature on how government action has affected them. We then briefly discuss changes in the socio-economic and ecological context in the Inner Niger Delta (section 3), and we map out key turning points and changes in the institutional framework (section 4). Section 5 analyses how local resource tenure systems have responded to this evolving contexts, identifying the nature, direction and extent of change in those systems. Section 6 draws some conclusions from this analysis	<a href="http://www.jlp.bham.ac.uk/volumes/52/cotulacisse-art.pdf">http://www.jlp.bham.ac.uk/volumes/52/cotulacisse-art.pdf</a>
Daes, Erica-Irene A. Special Rapporteur, <i>Prevention of discrimination and protection of indigenous peoples: Indigenous peoples' permanent sovereignty over natural resources</i> , Final Report, ECOSOC, E/CN.4/Sub.2/2004/30	This document constitutes the final report of the study on indigenous peoples' permanent sovereignty over natural resources. It should be read in conjunction with the Special Rapporteur's final working paper on indigenous peoples and their relationship to land (E/CN.4/Sub.2/2001/21). It contains a discussion of the principle of permanent sovereignty over natural resources as applied to indigenous peoples and takes into consideration, among other things, additional comments made by Governments and members of the Sub-Commission and data received from representatives of indigenous communities and organizations.	<a href="http://www.un.org/esa/socdev/unpfi/documents/Report%20by%20Erica%20Irene%20A.%20Daes.pdf">http://www.un.org/esa/socdev/unpfi/documents/Report%20by%20Erica%20Irene%20A.%20Daes.pdf</a>
Daneel, M. L. (1996). 'Environmental Reform: A New Venture of Zimbabwe's Traditional Custodians of the Land'. <i>Journal of Legal Pluralism</i> 37-38: 347-376	The hypothesis of this treatise is that in modern Zimbabwe the traditional custodians of the land—in other words, the environmentalists of African society as it evolved over the centuries—still have the authority and leadership potential to mobilize rural communities on a massive scale in communal programs of environmental reform. This hypothesis is based on the ecological endeavours, mainly in the field of afforestation, by Shona traditional authorities in the context of AZTREC (Association of Zimbabwean Traditional Ecologists) in Masvingo Province over the past six years.	<a href="http://www.jlp.bham.ac.uk/volumes/37-38/daneel-art.pdf">http://www.jlp.bham.ac.uk/volumes/37-38/daneel-art.pdf</a>
Davidson, S. (1994). 'New Zealand: Maori Fishing Rights'. <i>The International Journal of Marine and Coastal Law</i> 9(3): 408-414	This articles discusses the introduction of the Treaty of Waitangi (Fisheries Claims) Settlement Act and its implications	Available through subscription to online databases

Citation	Description	Access
De la Cruz, R. I. (2006). <i>Regional Study in the Andean Countries: Customary law in the Protection of Traditional Knowledge</i> , WIPO/GRTKF/LIM/07/5	In order to aid understanding between the systems of customary law (systems of own law) of indigenous peoples and local communities, and those of positive law (the systems codified in the national and international sphere), it has been proposed to tackle the subject from a very objective point of view in order to analyze the situation in five Andean countries (Bolivia, Peru, Ecuador, Colombia and Venezuela), and to see how these play an important role in the conservation and sustainable use of genetic resources and in traditional cultural expressions. This regional study has been directed by indigenous experts from the region working in collaboration with non-indigenous legal experts and from other relevant disciplines, in order to identify the tasks to strengthen and/or establish the conditions necessary to ensure an effective relationship between customary law and the systems of positive law at the national, regional and international levels.	<a href="http://www.wipo.int/export/sites/www/tk/en/consultations/customary_law/study_cruz_en.pdf">http://www.wipo.int/export/sites/www/tk/en/consultations/customary_law/study_cruz_en.pdf</a>
Delville, P. L. 1999. <i>Harmonising Formal Law and Customary Land Rights in French Speaking West Africa</i> . Drylands Issue Paper E86. London: IIED	This paper summarises current thinking on tenure issues in rural West Africa, then describes and analyses recent experiences before drawing some conclusions about ways to harmonise customary rights and formal law.	<a href="http://www.iied.org/pubs/pdfs/7405IIED.pdf">http://www.iied.org/pubs/pdfs/7405IIED.pdf</a>
Donaldson, W. J. (2000). <i>Sharecropping in the Yemen: A study of Islamic theory, custom, and pragmatism</i> . Leiden: Brill	This volume discusses sharecropping in the Yemen against the background of Islamic law and customary law. The first half of the book analyses how Islamic theory views sharecropping and is based on a detailed analysis of key legal texts, while the second half focuses on sharecropping as it exists in practice in the Yemen.	Note: link to preview, or purchase full text only <a href="http://www.ebooks.com/ebooks/book_display.asp?IID=253452&amp;isAcademic=y">http://www.ebooks.com/ebooks/book_display.asp?IID=253452&amp;isAcademic=y</a>
Dubois, O. 1997. <i>Rights and Wrongs of Rights to Land and Forest Resources in Sub-Saharan Africa: Bridging the gap between customary and formal rules</i> . Forestry Participation Series 10. London: IIED	This paper attempts to provide a synthesis of recent literature - both Anglophone and Francophone - about rights to land and forests in sub-Saharan Africa. These are at the heart of the debate on sustainable land use in this Region, because the dualist situation where formal and customary rules co-exist creates often confusion and tensions, which result in quasi open access to forest resources. Initiatives such as formal titling of land on the one hand; and codification and formalisation of customary rules on the other hand, have so far not lived up to their expectations. The author discusses more recent experiments and proposals aimed at bridging the gap between customary and formal rules. These concern adaptive legislation, enabling institutional frameworks and ways to convey information to stakeholders.	<a href="http://www.iied.org/pubs/pdfs/7525IIED.pdf">http://www.iied.org/pubs/pdfs/7525IIED.pdf</a>
Egbe, S. (1997). <i>Forest Tenure and Access to Forest Resources in Cameroon: An Overview</i> . Forest Participation Series No. 6. London: IIED	This paper provides an overview of the historical evolution of forest tenure and access to forest resources. Together with this examination of past experiences, it identifies constraints and opportunities in an attempt to engender a more indigenous resource tenure system in Cameroon.	<a href="http://www.iied.org/pubs/pdfs/7521IIED.pdf">http://www.iied.org/pubs/pdfs/7521IIED.pdf</a>
Fingleton, J. (2002). <i>Regional Study on Pacific Islands Forestry Legislation</i> . FAO Legal Papers Online #30	This paper reviews the forestry legislation in six Pacific Islands countries: Tonga, Samoa, Fiji, Papua New Guinea, Solomon Islands and Vanuatu. It was produced in preparation for a proposed regional workshop that FAO is planning to organize to discuss the issues and challenges for forestry legislation in the South-west Pacific, and to identify possible options for government decision-making to improve the legislation. See particularly: Ch 4 (ii) on meaningful involvement of customary landowners	<a href="http://www.fao.org/legal/prs-ol/lpo30.pdf">http://www.fao.org/legal/prs-ol/lpo30.pdf</a>



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Fingleton, J. (2008). <i>Pacific Land Tenures: New ideas for reform</i> . FAO Legal Papers Online #73	This paper examines the results of thirteen case studies, conducted during 2007, into customary land tenure issues across a spread of countries from East Timor to the Cook Islands. The goal of the case studies is to see how countries in the Pacific region have dealt with common issues affecting the development of customary land. Therefore, after treatment of each of the case studies, the paper then attempts to identify the main lessons for reform which can be drawn from them. These are grouped under four headings, and are illustrated by examples from the case studies. The headings are – the basic approach to reform of customary tenures, the pre-conditions for reform, the methods of reform and sustaining reform. Fifteen key lessons are identified, which can be taken into account in considering any land reform proposals for the region.	<a href="http://www.fao.org/legal/prsol/lpo73.pdf">http://www.fao.org/legal/prsol/lpo73.pdf</a>
Fingleton, J. (ed.) (2005). <i>Privatising Land in the Pacific: A defence of customary tenures</i> . Discussion Paper Number 80. Canberra: The Australia Institute	This discussion paper challenges the argument that Pacific nations must abandon their customary land tenures and embrace individual titles in order to develop. It is a response to the views of commentators – notably Helen Hughes and her co-authors at the Centre for Independent Studies – who claim that customary land tenures are a barrier to development everywhere, and governments should be encouraged and assisted to convert them to freehold or other forms of individual titles. Articles: Bourke, M. R. <i>Agricultural production and customary land in Papua New Guinea</i> Mosko, M. <i>Customary land tenure and agricultural success: the Mekeo case</i> Lightfoot, C. <i>Does customary land ownership make economic sense?</i> Fisher, R. J. <i>Common property and development: forests and pastures</i>	<a href="https://www.tai.org.au/file.php?file=DP80.pdf">https://www.tai.org.au/file.php?file=DP80.pdf</a>
Fingleton, J. S. (1993). 'Resolving conflicts between custom and official forestry law in the southwestern Pacific'. <i>Unasylva</i> 175: 16-22	An examination of the changing balance in the role of customary and official authority in forest management in the southwestern Pacific.	<a href="http://www.fao.org/docrep/v1500e/v1500e05.htm#resolving%20conflicts%20between%20custom%20and%20official%20forestry%20law%20in%20the%20southwestern">http://www.fao.org/docrep/v1500e/v1500e05.htm#resolving%20conflicts%20between%20custom%20and%20official%20forestry%20law%20in%20the%20southwestern</a>
Fingleton, J. S. (1998). <i>Legal Recognition of Indigenous Groups</i> . FAO Legal Papers Online #1	This article analyses one facet of the complex relationship between law and community-based management: the problem of how national laws recognize community-based land-owning or resource managing groups. In exploring this problem, this article presents detailed case studies of two countries in which the jurisprudence on this issue is relatively extensive: Papua New Guinea and Australia.	<a href="http://www.fao.org/legal/prsol/lpo1.pdf">http://www.fao.org/legal/prsol/lpo1.pdf</a>
Firestone, J. and Lilley, J. (2005). 'Aboriginal Subsistence Whaling and the Right to Practice and Revitalize Cultural Traditions and Customs'. <i>Journal of International Wildlife Law and Policy</i> 8(2): 177-219	Part 1 of this article places Makah whaling within a cultural context. Part 2 examines the legal framework within which the controversy arose: the Treaty of Neah Bay and the international whaling regime. Part 3 traces and examines the scientific, political, and legal hurdles, both domestic and international, that the Makah Nation faced in its attempt to revive its cultural practice of whaling. Finally, Part 4 reflects on a number of issues raised by this controversy.	Note: link to purchase full text only <a href="http://www.informaworld.com/smpp/content~db=all~content=a725273294">http://www.informaworld.com/smpp/content~db=all~content=a725273294</a>

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Gibson, C. C., McKean, M. A. and Ostrom, E. (eds.) (2000). <i>People and forests: Communities, institutions, and governance</i> . Cambridge: MIT Press	See in particular: Ch 2: Common Property: What Is It, What Is It Good for, and What Makes It Work? Ch 7: Indigenous Forest Management in the Bolivian Amazon: Lessons from the Yuracare People Ch 8: Population and Forest Dynamics in the Hills of Nepal: Institutional Remedies by Rural Communities	Note: preview and link to purchase full text only <a href="http://books.google.com.au/books?id=eBOiJaJ8yAoC&amp;printsec=frontcover&amp;dq=people+and+forests&amp;source=bl&amp;ots=5JrjVqKqpT&amp;sig=9H4f78RC4GsY4AuvgnDu6H7m6jU&amp;hl=en&amp;ei=Suk2TlbgENGfrAez14GwAg&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=6&amp;ved=0CCwQ6AEwBQ#v=onepage&amp;q&amp;f=false">http://books.google.com.au/books?id=eBOiJaJ8yAoC&amp;printsec=frontcover&amp;dq=people+and+forests&amp;source=bl&amp;ots=5JrjVqKqpT&amp;sig=9H4f78RC4GsY4AuvgnDu6H7m6jU&amp;hl=en&amp;ei=Suk2TlbgENGfrAez14GwAg&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=6&amp;ved=0CCwQ6AEwBQ#v=onepage&amp;q&amp;f=false</a>
Gilbert, J., 2006. <i>Indigenous Peoples' Land Rights Under International Law: From Victims to Actors</i> . Ardsley, New York: Transnational Publishers	This book addresses the right of indigenous peoples to live, own and use their traditional territories. A profound relationship with land and territories characterizes indigenous groups, but indigenous peoples have been and are repeatedly deprived of their lands. This book analyzes whether the international legal regime provides indigenous peoples with the collective right to live on their traditional territories. Through its meticulous and wide-ranging examination of the interaction between international law and indigenous peoples' land rights, the work explores several burning issues such as collective rights, self-determination, autonomy, property rights, and restitution of land. In assessing the human rights approach to land rights the book delves into the notion of past violations and the role of human rights law in providing for remedies, reparation and restitution. It also argues that there is a new phase in the relationship between States and indigenous peoples in the making of territorial agreements. Based on its analysis of indigenous peoples' land rights under international law, this book proposes an original theory as regards the legal status of indigenous peoples. It explores how indigenous peoples have been the victims of the rules governing title to territory since the inception of international law, and how under the current human rights regime, indigenous peoples have now gained the status of actors of international law.	Preview only: <a href="http://books.google.com/books?id=iMeYcqnQRU0C&amp;printsec=frontcover&amp;dq=Indigenous+Peoples'+Land+Rights+Under+International+Law:+From+Victims+to+Actors&amp;source=bl&amp;ots=RVSJolG5OS&amp;sig=oK78ZPD7LI4HRh9zB8Y6ORi47D8&amp;hl=en&amp;ei=wogOTc63A4-p8AaJpd2CDg&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=4&amp;ved=0CDQQ6AEwAw#v=onepage&amp;q&amp;f=false">http://books.google.com/books?id=iMeYcqnQRU0C&amp;printsec=frontcover&amp;dq=Indigenous+Peoples'+Land+Rights+Under+International+Law:+From+Victims+to+Actors&amp;source=bl&amp;ots=RVSJolG5OS&amp;sig=oK78ZPD7LI4HRh9zB8Y6ORi47D8&amp;hl=en&amp;ei=wogOTc63A4-p8AaJpd2CDg&amp;sa=X&amp;oi=book_result&amp;ct=result&amp;resnum=4&amp;ved=0CDQQ6AEwAw#v=onepage&amp;q&amp;f=false</a>
Hans, C. (1971). <i>Customary Law of the Haya Tribe, Tanganyika Territory</i> . London: Taylor & Francis Ltd	First published in 1945, this study covers a wide range of topics including marriage, divorce, bride-price, inheritance, property, personal status and contracts as well as some notes on the customary courts and the way they functioned during the period of British administration. Contains sections on division of property, including land, crops, and livestock etc; and a chapter on law of property, including public, individual, family and communal tenure, forests, spirit trees, water rights and rights of way. Also includes law for cattle, sheep, goats and fishing. Another chapter on courts.	Note: link to preview, or purchase full text only <a href="http://www.ebooks.com/ebooks/book_display.asp?IID=243153&amp;isAcademic=y">http://www.ebooks.com/ebooks/book_display.asp?IID=243153&amp;isAcademic=y</a>
Havemann, P. et. al. (2005). 'Traditional Use of Marine Resources Agreements and Dugong Hunting in the Great Barrier Reef World Heritage Area'. <i>Environmental and Planning Law Journal</i> 22(4): 258-280	This article examines the new traditional use of marine resources agreements (TUMRAs) which have been developed to enable the Great Barrier Reef Marine Park Authority to co-manage the Great Barrier Reef with traditional owners. It explores the TUMRAs' potential as a governance model against internationally established criteria and examples, as well as their potential for improved biodiversity conservation.	<a href="http://eprints.jcu.edu.au/4537/1/4537_Havemann_2005.pdf">http://eprints.jcu.edu.au/4537/1/4537_Havemann_2005.pdf</a>
Himsworth, C.M.G. (1972). 'The Botswana Customary Law Act, 1969'. <i>Journal of African Law</i> 16(1): 4-18	Discusses the Customary Law (Application and Ascertainment) Act 1969 Botswana, which formalised the relationship between common law and customary law	<a href="http://www.jstor.org/stable/744901">http://www.jstor.org/stable/744901</a>
Hinz, M. (1995). <i>Customary Land Law and the Implications for Forests, Trees and Plants</i> . Windhoek: FAO	Abstract unavailable	Unable to find internet access

Citation	Description	Access
Hinz, M. (1999). 'Profession: "Poacher": New Strategies to Accommodate Indigenous Rights Over Natural Resources". <i>Journal of Legal Pluralism</i> 44: 15-31	The thesis of this contribution is that modern hunting and nature conservation law is foreign to indigenous communities and lacks indigenous legitimacy. By ignoring indigenous hunting and conservation law and even denying the existence of indigenous societal principles that support conservation rules, the imposition of modern law has created a situation of alienation in which, e.g., the same behaviour is practised as 'normal' but nevertheless bears a negative connotation (poaching). This alienation is not easy to overcome after it has led to a vacuum in which values have difficulty in existing. In the following, modern hunting and nature conservation law will be investigated in contrast to the corresponding indigenous laws. The mentioned concept of conservancy, recently introduced, will be looked at as a possible alternative to the hunting and nature conservation law as it developed with the colonial penetration of the country.	<a href="http://www.jlp.bham.ac.uk/volumes/44/hinz-art.pdf">http://www.jlp.bham.ac.uk/volumes/44/hinz-art.pdf</a>
Hinz, M.O. and Ruppel, O.C. (eds). (2008). <i>Biodiversity and the ancestors: Challenges to customary and environmental law</i> . Windhoek: Namibian Scientific Society	The main objectives of the editors is to heighten awareness among academics, policymakers and the interested public of the fact that customary law fulfils important coordinating functions with regard to natural resource management in Namibia. This seems to be especially important if one considers the past impact of global, regional and national policies on the effectiveness of customary law. This impact is assessed in the first section of the book in particular, where issues like the link between cultural and biological diversity; the global, regional, national and local values of biodiversity; the protection of intellectual property rights; and the coordination of customary and statutory law are discussed.	Review available at: <a href="http://www.kas.de/upload/auslandshomepages/namibia/Namibia_Law_Journal/09-1/falk.pdf">http://www.kas.de/upload/auslandshomepages/namibia/Namibia_Law_Journal/09-1/falk.pdf</a>
Hodgson, S. (2004). <i>Land and water - the rights interface</i> . FAO Legislative Study #84	This publication is intended to synthesize and assess current learning on the interface between land tenure and water rights, to define salient issues and to propose fruitful approaches for further investigation. See particularly: Ch 6.1 on rights created under customary law, and Ch 7.1 on customary law - the fuzzy interface	<a href="ftp://ftp.fao.org/docrep/fao/007/y5692e/y5692e00.pdf">ftp://ftp.fao.org/docrep/fao/007/y5692e/y5692e00.pdf</a>
Huggins, C. (2000). <i>Rural Water Tenure in East Africa: A comparative Study of Legal Regimes and Community Responses to Changing Tenure Patterns in Tanzania and Kenya</i> . Nairobi: African Centre for Technology Studies	This paper looks at the water policy of Tanzania, and makes comparisons with the situation in Kenya. It focuses especially on recent attempts to move towards a participatory, demand-management approach to rural water supply. The paper is based on research conducted by ACTS2 in the Arusha Region of Tanzania, and the case studies from this specific area are then set in the context of national water policies.	<a href="http://pdf.usaid.gov/pdf_docs/PNACL385.pdf">http://pdf.usaid.gov/pdf_docs/PNACL385.pdf</a>
Janki, M. n.d. <i>Customary Water Laws and Practices: Guyana</i>	This article outlines water resources of Guyana, then discusses customary and statutory water rights in Guyana. It then discusses the legal status of customary water rights and the interface with statutory rights.	<a href="http://www.fao.org/legal/advserv/FAOIUCNcs/Guyana.pdf">http://www.fao.org/legal/advserv/FAOIUCNcs/Guyana.pdf</a>
Jentoft, S. et al. (2009). 'Fisheries Co-Management and Legal Pluralism: How an Analytical Problem Becomes an Institutional One'. <i>Human Organization</i> Spring 2009	This paper addresses two issues pertaining to legal pluralism in capture fisheries, particularly with regard to the South. First there is the problem of analysis. If legal pluralism is a common phenomenon, how is it to be discerned and understood? Secondly, there is the matter of institutional design: given the pervasiveness of legal pluralism, which management institutions are better suited to represent and resolve inter-legal system differences? The authors argue the case of co-management. Drawing on examples and insights from a comparative research project in South Asia, four basic types of legal pluralism and co-management are distinguished. The authors conclude that co-management is a process that brings legal systems, and their constituent organizations and groups, together within a single framework.	<a href="http://findarticles.com/p/articles/mi_qa3800/is_200904/ai_n31514025/">http://findarticles.com/p/articles/mi_qa3800/is_200904/ai_n31514025/</a>
Kaul, M. C. (1996). <i>Common Lands and Customary Law: Institutional Change in North India over the Past Two Centuries</i> . Delhi: Oxford University Press.	Abstract unavailable	Unable to find internet access

Citation	Description	Access
Kho, J. and Agsaoay-Sano. (n.d.) <i>Customary Water Laws and Practices: Philippines</i>	This article outlines water resources in the Philippines, then discusses customary and statutory water rights in the Philippines. It then discusses the legal status of customary water rights and the interface with statutory rights.	<a href="http://www.fao.org/legal/advserv/FAOIUCNcs/Philippines.pdf">http://www.fao.org/legal/advserv/FAOIUCNcs/Philippines.pdf</a>
Krzeczunowicz, G. (1963). 'The Ethiopian Civil Code: Its Usefulness, Relation to Custom and Applicability'. <i>Journal of African Law</i> 7(3): 172-177	This article contains brief discussion of the need for codification, the place of custom in the Civil Code, and the application of the Code.	Available through subscription to online databases
Kuemlangan, B. (2004). 'Creating legal space for community-based fisheries and customary marine tenure in the Pacific: issues and opportunities'. <i>FishCode Review</i> 7: 65p	This document reviews legal aspects of community-based fisheries management (CBFM) and the role of legislation in enhancing CBFM and customary marine tenure in the Pacific. It was prepared on the basis of a literature and legislative review and site visits to the Cook Islands, Fiji, Palau, Papua New Guinea, Solomon Islands and Vanuatu in 2003, undertaken by Blaise Kuemlangan (FAO Development Law Service).	<a href="http://www.fao.org/legal/prsol/kuemlangan.pdf">http://www.fao.org/legal/prsol/kuemlangan.pdf</a>
Kumar, K.G. (2010). <i>The Indonesia Workshop Report</i> . Workshop report from Workshop on Customary Institutions in Indonesia: Do They Have a Role in Fisheries and Coastal Area Management? Lombok, Indonesia: 2-5 August 2009	Objectives: to discuss the role and relevance of traditional knowledge and customary arrangements in fisheries and coastal area management in Indonesia; to review how customary rights to resources and arrangements can be better recognized and adapted to meet fisheries and coastal area management objectives, consistent with national and international obligations; and to strengthen understanding and links between customary institutions, policymakers, researchers and others.	<a href="http://icsf.net/icsf2006/uploads/publications/proceeding/pdf/english/issue_104/ALL.pdf">http://icsf.net/icsf2006/uploads/publications/proceeding/pdf/english/issue_104/ALL.pdf</a>
Kuruk, P. (2004). <i>Customary Water Laws and Practices: Nigeria</i> .	This article outlines customary water rights and statutory water rights, as well as the management of water resources, in Nigeria. It then discusses the legal status of customary water rights and the interface with statutory rights.	<a href="http://www.fao.org/Legal/advserv/FAOIUCNcs/Nigeria.pdf">http://www.fao.org/Legal/advserv/FAOIUCNcs/Nigeria.pdf</a>
Laird Sarah (2002) <i>Biodiversity and Traditional Knowledge: Equitable Partnerships in Practice</i> . London: Earthscan	This book offers practical guidance on how to arrive at equitable biodiversity research and prospecting partnerships. Drawing on experience and lessons learned from around the world, it provides case studies, analysis and recommendations in a range of areas that together form a new framework for creating equity in these partnerships. They include researcher codes of ethics, institutional policies, community research agreements, the design of more effective commercial partnerships and biodiversity prospecting contracts, the drafting and implementation of national 'access and benefit-sharing' laws, and institutional tools for the distribution of financial benefits.	Preview only: <a href="http://books.google.com/books?hl=en&amp;lr=&amp;id=l7DLShPm-X0C&amp;oi=fnd&amp;pg=PR7&amp;dq=Biodiversity+and+Traditional+Knowledge:+Equitable+Partnerships+in+Practice&amp;ots=tEDIV7KhUA&amp;sig=z9594YABi3SawXbZQIH4okuXz04#v=onepage&amp;q&amp;f=false">http://books.google.com/books?hl=en&amp;lr=&amp;id=l7DLShPm-X0C&amp;oi=fnd&amp;pg=PR7&amp;dq=Biodiversity+and+Traditional+Knowledge:+Equitable+Partnerships+in+Practice&amp;ots=tEDIV7KhUA&amp;sig=z9594YABi3SawXbZQIH4okuXz04#v=onepage&amp;q&amp;f=false</a>
Land & Water Australia (2008). <i>An Agreement Approach that Recognises Customary Law in Water Management</i> . Fact sheet. Canberra: Australian Government	Advocates using In-Principle Agreements to recognise customary law in water management	<a href="http://www.aiatsis.gov.au/research/publications/Land&amp;Water/pn30040_0.pdf">http://www.aiatsis.gov.au/research/publications/Land&amp;Water/pn30040_0.pdf</a>
Larmour, P. (1997). <i>The Governance of Common Property in the Pacific Region</i> . Canberra: Australian National University National Centre for Development Studies	Abstract unavailable	Unable to find internet access

Citation	Description	Access
Larson, A. et al. (eds.) (2010). <i>Forests for People: Community Rights and Forest Tenure Reform</i> . London: Earthscan	This book examines trend of transferring forests to communities. Based on research in over 30 communities in Asia (India, Nepal, Philippines, Laos, Indonesia), Africa (Burkina Faso, Cameroon, Ghana) and Latin America (Bolivia, Brazil, Guatemala, Nicaragua), it examines the process and outcomes of granting new rights, assessing a variety of governance issues in implementation, access to forest products and markets and outcomes for people and forests. This book also examines forest tenure reforms, ranging from titling of indigenous territories to the granting of small land areas for forest regeneration or the right to share in timber revenues. It explores the nature of forest reform, the extent and meaning of rights transferred or recognised, and the role of authority and citizens' networks in forest governance	Note: bibliographic details only <a href="http://www.earthscan.co.uk/?TabId=101803&amp;v=511459">http://www.earthscan.co.uk/?TabId=101803&amp;v=511459</a>
Lavigne Delville, P. (1999). <i>Harmonising formal law and customary land rights in French-speaking West Africa</i> . IIED: London.	This chapter summarises current thinking on rural tenure issues in West Africa, then describes and analyses recent experiences before drawing some conclusions about ways to harmonise customary rights and formal law.	<a href="http://www.gret.org/ressource/pdf/harmonising.pdf">http://www.gret.org/ressource/pdf/harmonising.pdf</a>
Maganga, F. P. (2003). 'Incorporating Customary Laws in Implementation of IWRM: Some Insights from Rufiji River Basin, Tanzania'. <i>Physics and Chemistry of the Earth</i> 28: 995-1000	Tanzania operates under a plural legal system, where the diverse customary systems are relied upon in the implementation of IWRM. Very few human activities are regulated by statutory laws alone. Neglect of customary laws may cause IWRM implementation to fail, or will have negative consequences for individuals and groups who were better served by customary-based systems. This paper describes statutory and customary systems of managing water resources and discusses some of the challenges of implementing IWRM whilst taking appropriate account of customary laws in Tanzania, with the Rufiji River Basin as a case study.	<a href="http://www.nri.org/projects/waterlaw/Documents/Maganga_pce_28.pdf">http://www.nri.org/projects/waterlaw/Documents/Maganga_pce_28.pdf</a>
Martin, E. (1996). 'Cultures in Conflict in Hawaii: The Law and Politics in Native Hawaiian Water Rights'. <i>University of Hawaii Law Review</i> 18(1): 71-199	This article focuses on struggles over water in Hawaii and describes a number of critical water management problems and processes confronting Hawaiian communities. It also suggests possible option for more effectively administering Hawaiians' water resources within the context of existing state and county water management structures. As Hawaiians move towards greater self-determination and sovereignty, opportunities to adopt culturally-based and community-based solutions to water resource management and allocation issues increase.	Available through subscription to online databases
McHugh, P., 2004. <i>Aboriginal societies and the Common Law: A History of Sovereignty, Status and Self-determination</i> . Oxford University	This book describes the encounter between the common law legal system and the tribal peoples of North America and Australasia. It is a history of the role of anglophone law in managing relations between the British settlers and indigenous peoples. That history runs from the plantation of Ireland and settlement of the New World to the end of the 20th century. The book begins by looking at the nature of British imperialism and the position of non-Christian peoples at large in the 17th and 18th centuries. It then focuses on North America and Australasia from their early national periods in the 19th century to the modern era. The historical basis of relations is described through the key, enduring, but constantly shifting questions of sovereignty, status and, more latterly, self-determination. Throughout the history of engagement with common law legalism, questions surrounding the settler-state's recognition — or otherwise — of the integrity of the tribe have recurred. These issues were addressed in many and varied imperial and colonial contexts, but all jurisdictions have shared remarkable historical parallels which have been accentuated by their common legal heritage. The same questioning continues today in the renewed and controversial claims of the tribal societies to a distinct constitutional position and associated rights of self-determination. The author examines the political resurgence of aboriginal peoples in the last quarter of the 20th century. A period of 'rights-recognition' was transformed into a second-generation jurisprudence of rights-management and rights-integration. From the 1990s onwards, aboriginal affairs have been driven by an increasingly rampant legalism.	Abstract only: <a href="http://www.oxfordscholarship.com/oso/public/content/law/9780198252481/toc.html">http://www.oxfordscholarship.com/oso/public/content/law/9780198252481/toc.html</a>

Citation	Description	Access
<p>McRae, H. (ed.) (2009). <i>Indigenous Legal Issues: commentary and materials, 4th Edn.</i> Sydney: Thomson Reuters (Professional) Australia Limited</p>	<p>Indigenous Affairs continues to be a controversial and fast moving area of public policy and law, the latest issue being whether racial equality needs to be dispensed with in order to protect Indigenous children. This edition, as with previous editions, will cover the full scope of Indigenous legal issues with considerable depth, including extracts of key primary materials. Readers from all walks of life and professions will find the new edition a useful introduction to Indigenous legal issues and ideal reference textbook for the workplace. Among the significant developments considered in this edition are:</p> <ul style="list-style-type: none"> <li>• The abolition of ATSIC and recent moves towards establishing a successor body (or bodies) to represent Indigenous Australians;</li> <li>• The continuing need to 'close the gap' between the socio-economic conditions of Indigenous and other Australians;</li> <li>• The federal Government's 'Northern Territory Emergency Response' intervention in 2007;</li> <li>• The change of national government later that year followed by the Commonwealth Parliament's 2008 apology to 'the Stolen Generations'; and</li> <li>• The Palm Island case.</li> </ul> <p>The final Part contains a new chapter on International Law developments, and concludes by surveying a number of outstanding issues on the agenda of social justice and reconciliation.</p>	<p>Abstract only:  <a href="http://www.thomsonreuters.com.au/catalogue/ProductDetails.asp?ID=10235">http://www.thomsonreuters.com.au/catalogue/ProductDetails.asp?ID=10235</a></p>
<p>Meinzen-Dick, R. and Pradhan, R., (2001). 'Implications of Legal Pluralism for Natural Resource Management'. <i>IDS Bulletin</i> 32(4): 10-17</p>	<p>This article draws insights from legal pluralism to propose alternative ways to view property rights and resource users' relationships with natural resources. In this article we argue that, rather than seeking a single definition of property rights, it is better to recognise the multiple and often overlapping bases for claims, and to regard property rights and the uses of resources as negotiated outcomes. Not only does this lead to a more accurate understanding of the situation that resource users face, but it allows greater flexibility to adapt to changes and uncertainty, as the examples from water rights demonstrate.</p>	<p>Available through subscription to online databases</p>
<p>Meinzen-Dick, R. S. and Pradhan, R. (2002). <i>Legal pluralism and dynamic property rights.</i> CAPRI Working Paper no. 22. Washington, D.C.: International Food Policy Research Institute</p>	<p>Legal pluralism can create uncertainty especially in times of conflict because any individual is unlikely to have knowledge of all types of law that might be relevant, and because rival claimants can use a large repertoire to lay claim to a resource. However, at the same time the multiple legal frameworks facilitate considerable flexibility for people to manoeuvre in their use of natural resources. Legal pluralism also introduces a sense of dynamism in property rights, as the different legal frameworks do not exist in isolation, but influence each other, and can change over time. Unless these aspects of property rights are recognized, changes in statutory law intended to increase tenure security may instead increase uncertainty, especially for groups with less education and contacts. This paper illustrates the implications of legal pluralism for our understanding of natural resource management and policies toward resource tenure, using the example of water rights.</p>	<p><a href="http://www.capri.cgiar.org/pdf/capriwp22.pdf">http://www.capri.cgiar.org/pdf/capriwp22.pdf</a></p>
<p>Mekouar, M.A. (1993). 'L' environnement Entre la loi et la Coutume: Quelques Observations Autour du Droit Djiboutien'. In Kiss, A. C. et al. <i>A Law for the Environment: Essays in Honour of Wolfgang E. Burhenne</i>, 75-92. Gland and Cambridge: IUCN</p>	<p>Abstract unavailable</p>	<p>Note: preview only  <a href="http://books.google.com.au/books?id=eSn3q7H-IBMC&amp;lpg=PA75&amp;ots=70GtJnXmYp&amp;dq=L:%20environnement%20Entre%20la%20loi%20et%20la%20Coutume%3A%20Quelques%20Observations%20Autour%20du%20Droit%20Djiboutien&amp;pg=PA75#v=onepage&amp;q&amp;f=false">http://books.google.com.au/books?id=eSn3q7H-IBMC&amp;lpg=PA75&amp;ots=70GtJnXmYp&amp;dq=L:%20environnement%20Entre%20la%20loi%20et%20la%20Coutume%3A%20Quelques%20Observations%20Autour%20du%20Droit%20Djiboutien&amp;pg=PA75#v=onepage&amp;q&amp;f=false</a></p>

Citation	Description	Access
<p>Mohamed-Katerere, J. (2001). 'Participatory Natural Resources Management in the Communal Lands of Zimbabwe: What Role for Customary Law?'. <i>African Studies Quarterly</i> 5(3): [online] &lt;<a href="http://web.africa.ufl.edu/asq/v5/v5i3a7.htm">http://web.africa.ufl.edu/asq/v5/v5i3a7.htm</a>&gt;</p>	<p>This paper examines the relationship between formal and informal norms and institutions as an aspect of governance in environmental decentralization initiatives within Zimbabwe's communal lands. It addresses this issue from a legal perspective and in particular a human rights paradigm. It considers both well established human rights and emerging rights with in the new generation of multi-lateral environmental treaties. It is argued that the international legal regime creates a framework for participation and defines fundamental principles for the realization of environmental objectives. These rights must be recognized within national systems if they are to be consistent with emerging international regimes.</p> <p>The paper explores the nature and status of customary law in Zimbabwe and its interaction with state institutions and formal rule systems. It considers whether the recognition of customary law is fundamental to good governance and, in particular, for creating viable systems for meaningful local level participation. It is demonstrated that the status of customary law, and the level of participation provided for, falls short of developments in international law and seriously undermines environmental governance that is capable of realizing sustainable development objectives.</p>	<p><a href="http://web.africa.ufl.edu/asq/v5/v5i3a7.htm">http://web.africa.ufl.edu/asq/v5/v5i3a7.htm</a></p>
<p>Mukherjee, P. (2004). 'Community Rights and Statutory Laws: Politics of Forest Use in Uttarakhand Himalayas'. <i>Journal of Legal Pluralism</i> 50: 161-172</p>	<p>The present paper aims to highlight the dominance of statutory laws over local self-governing institutions and how community space is constricted in the name of participatory governance. It also highlights the fact that the introduction of New Joint Forest Management in 1996 has overridden the customary claims of communities on forests practiced over decades. Further, it shows how boundaries and fences have become sites of anxiety, creating artificial enclaves and plots, and in the process excluding communities from their rightful access to resources.</p>	<p><a href="http://www.jlp.bham.ac.uk/volumes/50/mukherjee-art.pdf">http://www.jlp.bham.ac.uk/volumes/50/mukherjee-art.pdf</a></p>
<p>Mwebaza, R. (1999). <i>How to Integrate Statutory and Customary Tenure: The Uganda Case</i>. Drylands Issue Paper E83. London: IIED</p>	<p>This paper seeks to examine the extent to which Uganda has tried to integrate statutory and customary systems in land policy and legislation with particular emphasis being placed on the Uganda Constitution of 1995 and the newly enacted Uganda Land Act, 1998.</p>	<p><a href="http://www.iied.org/pubs/pdfs/7401IIED.pdf">http://www.iied.org/pubs/pdfs/7401IIED.pdf</a></p>
<p>Nkonya, L. K. (2006). 'Customary Laws for Access to and Management of Drinking Water in Tanzania'. <i>Law, Environment and Development Journal</i> 2(1): 50-66</p>	<p>The purpose of this study is to analyse the impact of customary (informal) laws on water management in Tanzania and show how they might be used to complement the statutory (formal) laws. I use Tanzania as a case study since the country has a long history of decentralisation. This study will focus on the customary laws and institutions of the Sukuma people of Northern Tanzania.</p>	<p><a href="http://www.lead-journal.org/content/06050.pdf">http://www.lead-journal.org/content/06050.pdf</a></p>
<p>Nonggorr, J. (1993). 'Resolving Conflicts in Customary Law and Western Law in Natural Resource Development in Papua New Guinea'. <i>University of New South Wales Law Journal</i> 16(2): 433-457</p>	<p>This paper proposes a number of ways to avoid conflicts, especially in dealing with landowners on issues such as acquisition of land, mineral rights, dealings with land and instruments used with the object of ensuring that the projects that are important to Papua New Guinea's economy are developed without the sort of disruptions now rampant in the country.</p>	<p><a href="http://www.austlii.edu.au/au/journals/UNSWLawJl/1993/17.html">http://www.austlii.edu.au/au/journals/UNSWLawJl/1993/17.html</a></p>
<p>Nowlan, L. n.d. <i>Customary Water Laws and Practices in Canada</i></p>	<p>This paper describes Canada's water resources; discusses customary water laws; and sets out the laws used in Canada to manage water. It then describes the legal interface between customary water laws and statutory rights, discussing different sources of Aboriginal rights to water in Canada. It discusses mechanisms to reconcile conflicts and to resolve disputes between these two bodies of law.</p>	<p><a href="http://www.fao.org/legal/advserv/FAOIUCNcs/Canada.pdf">http://www.fao.org/legal/advserv/FAOIUCNcs/Canada.pdf</a></p>
<p>Onibon, A., Dabire, B. and Ferroukhi, L. (1999). <i>Decentralization and devolution in forestry</i>. <i>Unasylva</i> 199: 67</p>	<p>This article reflects on local practices and the decentralization and devolution of natural resource management in French-speaking West Africa. The term "local practices" means not only local approaches, methods and techniques for managing natural resources but also, and more significantly, the roles and functions of local institutions and structures - non-governmental organizations (NGOs), small farmers' associations, youth associations, local administrative units, traditional and local chiefs, decentralized technical and administrative structures, etc. - that are actively involved in managing the resources.</p>	<p><a href="http://www.fao.org/docrep/x3030e/x3030e08.htm#local%20practices%20and%20the%20decentralization%20and%20devolution%20of%20natural%20resource%20mana">http://www.fao.org/docrep/x3030e/x3030e08.htm#local%20practices%20and%20the%20decentralization%20and%20devolution%20of%20natural%20resource%20mana</a></p>

Citation	Description	Access
Orebeck, P. et al. (2005). <i>The Role of Customary Law in Sustainable Development</i> . New York: Cambridge University Press	Using case studies from Greenland, Hawaii and Northern Norway, this book examines whether 'bottom-up' systems such as customary law can play a critical role in achieving viable systems for managing natural resources.	Unable to find internet access
Ottley, B. L. (2002) 'Reconciling Modernity & Tradition: PNG's <i>Underlying Law Act</i> '. <i>Reform</i> 80: 22-25 and 70-71	Papua New Guinea's <i>Underlying Law Act</i> has the potential to alter that country's legal system and to serve as a model for the role that customary law can play in national legal systems. This article provides an overview of the provisions of that Act and examines briefly the debate over modernity and tradition and the attempt of Papua New Guinea's Parliament to reconcile those forces in the <i>Underlying Law Act</i> .	<a href="http://bar.austlii.edu.au/au/other/alrc/publications/reform/reform80/05.html#fnb24">http://bar.austlii.edu.au/au/other/alrc/publications/reform/reform80/05.html#fnb24</a>
Oviedo G. and Noejovich, F. (2005). <i>Composite Report on the Status and Trends Regarding the Knowledge, innovations and Practices of indigenous and local Communities. Regional Report: Latin America, Central and the Caribbean Information document, UNEP/CBD/WG8j/4/inf/.</i>	This document is the component for Latin America and the Caribbean of the Second Phase of the Composite Report on the Status and Trends Regarding the Knowledge, Innovations and Practices of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biodiversity. The topic of this report of the Second Phase is the factors, national and local, affecting the maintenance, preservation and application of traditional knowledge of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity in Latin America and the Caribbean.	<a href="http://www.cbd.int/doc/meetings/tp/acpow8j-02/official/acpow8j-02-02-add4-en.pdf">http://www.cbd.int/doc/meetings/tp/acpow8j-02/official/acpow8j-02-02-add4-en.pdf</a>
Owley, J. (2004). 'Tribal Sovereignty Over Water Quality'. <i>Journal of Land Use and Environmental Law</i> 20(1): 61-116	Section I: tribal sovereignty over natural resources. Section III: description of the federal water quality laws. Section IV: role of tribes within the Clean Water Act and recent statutory changes recognizing tribal sovereignty over water quality embodied in section 518 of the Act. Section V: civil and criminal jurisdiction over tribal lands. Section VI: case law that deals with tribal enforcement of environmental laws. Section VII: Environmental Protection Agency's current practices	<a href="http://www.law.fsu.edu/journals/landuse/vol20_1/Owley.pdf">http://www.law.fsu.edu/journals/landuse/vol20_1/Owley.pdf</a>
Pankhurst, A. and Assefa, G. (eds.) (2008) <i>Grass-Roots Justice in Ethiopia: The contribution of customary dispute resolution</i> . Addis Ababa: United Printers	Abstract unavailable	Unable to find internet access
Posey, D. (1996) <i>Traditional Resource Rights: International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities</i> . Gland: IUCN	Abstract unavailable	Unable to find internet access
Ramazzotti, M. (1996). <i>Readings in African Customary Water Law</i> . FAO Legislative Study. Rome: FAO	This publication is intended as a contribution to the knowledge of traditional systems of tenure and disposition of water resources in Africa. It does not result from original field research, but from a search of references contained in legal-anthropological literature. These are brought together here as to make them readily accessible to policymakers, planners, project managers, social science researchers, administrators and, in general, water professionals.	Note: preview only <a href="http://books.google.com.au/books?id=ieZTKL8Sx6MC&amp;pg=PP1&amp;dq=%22readings%20in%20african%20customary%20water%20law%22&amp;pg=PP1#v=onepage&amp;q&amp;f=false">http://books.google.com.au/books?id=ieZTKL8Sx6MC&amp;pg=PP1&amp;dq=%22readings%20in%20african%20customary%20water%20law%22&amp;pg=PP1#v=onepage&amp;q&amp;f=false</a>
Ramazzotti, M. (2008). <i>Customary Water Rights and Contemporary Water Legislation: Mapping out the interface</i> . FAO Legal Papers Online #78.	This discussion seeks to map out the relationship between statutory law and customary law in the water sector, deriving from eight selected case studies spanning North America, Latin America, Africa and Asia. Eight legal experts were called upon to survey their own country's customary legal systems. The experts dealt with their customary laws according to the mainstream legal method. The country reports deal with customary water laws with various levels of detail; differences in the amounts of material collected are apparent according to availability of information in the various case studies. This often reflects the ease in which the two systems interact, or where not much information is available, their degree of separation from each other.	<a href="http://www.fao.org/legal/prsol/lpo76.pdf">http://www.fao.org/legal/prsol/lpo76.pdf</a>



Citation	Description	Access
Raven, M. (2005) 'Rethinking the Public Domain: A Challenge for Knowledge-Sharing Spaces in the Information Age', <i>Work in Progress</i> 17(2)	Abstract unavailable	Unable to find internet access
Richardson, B. J, Imai, S. and McNeil, K. (2009) 'Indigenous Peoples and the Law – Historical, comparative and contextual issues', in Benjamin J Richardson, Shin Imai and Kent McNeil (eds.) <i>Indigenous Peoples and the Law: Comparative and Critical Perspectives</i> . Portland: Osgoode Readers, Hart Publishing Ltd. 3-21.	This book provides an historical, comparative, and contextual analysis of various legal and policy issues concerning Indigenous peoples. It focuses on the principal common law jurisdictions, namely Australia, Canada, New Zealand, and the United States (US), as well as relevant international law developments.	Preview only: <a href="http://www.amazon.com/Indigenous-Peoples-Law-Comparative-Perspectives/dp/1841137952">http://www.amazon.com/Indigenous-Peoples-Law-Comparative-Perspectives/dp/1841137952</a>
Rovere, M.B. and Iza, A. (2007). <i>Prácticas ancestrales y derecho de aguas: De la tensión a la coexistencia</i> . IUCN Environmental Policy and Law Paper No. 68. Gland: IUCN	Abstract unavailable	<a href="http://data.iucn.org/dbtw-wpd/edocs/EPLP-068.pdf">http://data.iucn.org/dbtw-wpd/edocs/EPLP-068.pdf</a>
Roy, R. D. (2004). 'Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh'. <i>Arizona Journal of International and Comparative Law</i> 21(1): 113-182	This paper outlines constitutional and administrative history of the Chittagong Hill Tracts and its impact on customary law. Section IX analyses the seemingly equivocal status of customary resource rights under the apparently conflicting customary and state legal regimes, and argue that customary resource rights have a legal basis under the Constitution of Bangladesh and the British-promulgated CHT Regulation of 1900. Section X discusses what the study identifies as the major challenges in protecting customary law	<a href="http://www.ajicl.org/AJICL2004/vol211/Royarticle.pdf">http://www.ajicl.org/AJICL2004/vol211/Royarticle.pdf</a>
Sanchez, V. and Calestous, J. (eds.) (1994) <i>Biodiplomacy: Genetic resources and International Relations</i> . Nairobi: African Centre for Technology Studies Press	To develop the concept of biodiplomacy, this book is divided into five parts. The first part presents an overview of the basic principles of international environmental law and how they relate to genetic resources. Part II of the book addresses the issue of access to genetic resources and the protection of the rights of indigenous peoples and local communities. Issues related to access and transfer of biotechnology are addressed in Part III. Part IV analyses the theme of sharing the benefits of biotechnology. The last part presents ways by which the Convention on Biological Diversity can be implemented.	<a href="http://idl-bnc.idrc.ca/dspace/bitstream/10625/16161/1/100172.pdf">http://idl-bnc.idrc.ca/dspace/bitstream/10625/16161/1/100172.pdf</a>
Sarpong, G. A. (2005). <i>Customary Water Laws and Practices: Ghana</i>	This article outlines legal pluralism and Ghanaian water laws, looking at customary rights and practices, and the relationship between statutory law and customary water rights. It particularly looks at the impact of the Water Resources Commission Act 1996 on customary rights	<a href="http://www.fao.org/Legal/ADVS/ERV/FAOIUCNcs/Ghana.pdf">http://www.fao.org/Legal/ADVS/ERV/FAOIUCNcs/Ghana.pdf</a>
Singer, N. J. (1971). 'The Ethiopian Civil Code and the Recognition of Customary Law'. <i>Houston Law Review</i> 9: 460-949	It is the purpose of this article to consider how the development of the governmental legal system actually strengthened the functioning of customary institutions and how the strengthened customary institutions in turn were involved in the codification process, without the necessity of setting up a parallel legal system to administer them. It is for this purpose that the article analyses the provisions of Title XX of the Civil Code of 1960, "Compromise and Arbitral Submission".	Available through subscription to online databases

Citation	Description	Access
Singh, K. S. (ed.) (1993). <i>Tribal Ethnography, Customary Law and Change</i> . New Delhi: Concept Publishing Company	40 articles on customary law throughout India. See particularly: Ch 14: <i>Customary Law among the Oraon of Bihar</i> by William Ekka Ch 21: <i>Dhurwa Customary Law and State Law</i> by K. N. Thusu Ch 37: <i>Customary Laws in Andaman and Nicobar Islands</i> by T. N. Pandit	Preview and links to purchase full text: <a href="http://books.google.com/books?id=X4bW-_jEvXoC&amp;printsec=frontcover&amp;source=gbs_ge_summary_r&amp;cad=0#v=onepage&amp;q&amp;f=false">http://books.google.com/books?id=X4bW-_jEvXoC&amp;printsec=frontcover&amp;source=gbs_ge_summary_r&amp;cad=0#v=onepage&amp;q&amp;f=false</a>
Soreng, S. U. (2007). 'Fishing Rights Struggles in Norway: Political or Legal Strategies?'. <i>Journal of Legal Pluralism</i> 55: 187-210	Seeking to identify the strategies which persons or groups may adopt to gain such fisheries assets, this paper reports on two initiatives for gaining fishing rights in the coastal zone in northern Norway. One is a Sami fishing rights struggle and the other a non-indigenous fishing rights struggle. An action group representing non-indigenous small-scale fishers chose to launch a lawsuit against the state, claiming that the state fisheries management system excludes bona fide fishers from making a living, contrary to common usage, customary law and other fisheries legislation. The Sami Parliament, on the other hand, has ever since its constitution in 1989 negotiated through political channels for the adoption of Sami fisheries as a legitimate concept in Norwegian state legislation and the establishment of Sami fisheries zones. The paper explores their choice of strategies, neither of which has had a high degree of success, and considers how the parties could collaborate to achieve their goals.	Abstract only: <a href="http://www.jlp.bham.ac.uk/volumes/55/soreng-abs.htm">http://www.jlp.bham.ac.uk/volumes/55/soreng-abs.htm</a>
Spiertz, H. L. J. 1991. The Transformation of Traditional Law: A Tale of People's Participation in Irrigation Management in Bali. <i>Landscape and Urban Planning</i> 20: 189	The concept of "traditionality" (applied to law, institutions, people's participation, etc.) cannot be used in a general way to "explain" the conduct of people. This way of theorizing about social and cultural dynamics does not take into account the distinction between the context of action (e.g. traditional law) and the acting people themselves, which may or may not justify their actions by referring to (parts of) this context. Only by studying specific interaction situations can the role of traditional law be determined. This is exemplified by a case study on the changes in traditional water management on Bali.	Note: abstract and link to purchase full text only <a href="http://www.sciencedirect.com/science?_ob=ArticleURL&amp;_udi=B6V91-471Y3R3-12&amp;_user=10&amp;_coverDate=12%2F31%2F1991&amp;_rdoc=1&amp;_fmt=high&amp;_orig=search&amp;_sort=d&amp;_docanchor=&amp;view=c&amp;_acct=C00050221&amp;_version=1&amp;_urlVersion=0&amp;_userid=10&amp;md5=9b3e89408b1bbf1e972d780bad346672">http://www.sciencedirect.com/science?_ob=ArticleURL&amp;_udi=B6V91-471Y3R3-12&amp;_user=10&amp;_coverDate=12%2F31%2F1991&amp;_rdoc=1&amp;_fmt=high&amp;_orig=search&amp;_sort=d&amp;_docanchor=&amp;view=c&amp;_acct=C00050221&amp;_version=1&amp;_urlVersion=0&amp;_userid=10&amp;md5=9b3e89408b1bbf1e972d780bad346672</a>
Swiderska, K. (2004). <i>Traditional knowledge protection and recognition of customary law: Policy issues and challenges</i> . Paper prepared for the Planning Workshop on 'Protecting community rights over traditional knowledge: Implications of customary laws and practices', London, 4-5 May 2004	This paper explores the policy issues and challenges surrounding the protection of traditional knowledge (TK) relating to biological resources and the recognition of customary law systems. It reviews the commercial use of TK, international and national policy processes, human rights fora and indigenous peoples'/NGO proposals. It is intended to provide background information for project partners.	<a href="http://www.iied.org/pubs/pdfs/G01252.pdf">http://www.iied.org/pubs/pdfs/G01252.pdf</a>
Swiderska, K. (2006). <i>Protecting Traditional Knowledge: A framework based on Customary Laws and Bio-Cultural Heritage</i> . Paper for the International Conference on Endogenous Development and Bio-Cultural Diversity (Geneva: 2-5 October, 2006)	This paper is based on the work of IIED and research and indigenous partners in Peru, Panama, India, Kenya and China. It is a collective contribution from the project "Protecting Community Rights over Traditional Knowledge: Implications of Customary Laws and Practices". Through participatory action-research the project is exploring the customary laws and practices of indigenous communities to inform the development of appropriate policies and mechanisms for the protection of traditional knowledge and bio-genetic resources at local, national and international level.	<a href="http://www.iied.org/pubs/pdfs/G01069.pdf">http://www.iied.org/pubs/pdfs/G01069.pdf</a>

Citation	Description	Access
Swiderska K, Argumedo, A., Pant, R., Vedavathy, S., Nellithanam, J., Munyi, P., Mutta, D. et al. (2006) <i>Protecting Community Rights over Traditional Knowledge: Implications of Customary Laws and Practices, Interim Report</i> (2005 2006) London: IIED	The <i>purpose</i> of this collaborative research project is to assist indigenous and local communities to protect their rights over traditional knowledge relating to biological resources, in accordance with their customary laws and practices. The <i>specific objectives</i> are: a) To undertake case studies in Peru, India, Kenya, China and Panama, to examine: i) the customary laws and practices of indigenous and local communities relevant for controlling external use of TK; and ii) the implications for the development of mechanisms to protect TK at local, national and international levels. b) To inform and influence policy makers (local, state and national authorities, the CBD, WIPO, WTO and UN Indigenous Rights fora).	<a href="http://pubs.iied.org/pdfs/G01253.pdf?">http://pubs.iied.org/pdfs/G01253.pdf?</a>
Swiderska, K., et al. n.d. <i>Elements for Sui Generis Systems: Collective Bio-Cultural Heritage and Customary Laws in Peru, Panama, India, China and Kenya</i> . Side Event at 8(j) Working Group (Geneva, 25 January 2008)	This paper discusses a project on what it means to protect traditional knowledge in accordance with customary laws and practices of indigenous and local communities	<a href="http://www.iied.org/pubs/pdfs/G01217.pdf">http://www.iied.org/pubs/pdfs/G01217.pdf</a>
Tan, N. Q. et al. (2008). <i>Statutory and Customary Forest Rights and their Governance Implications</i> . Gland: IUCN	This summary report is an output of a larger national study conducted by Strengthening Voices for Better Choices (SVBC) in Viet Nam (similar studies have been conducted in other SVBC project countries). The study aimed to: (i) identify policy, legal, institutional and economic obstacles to sustainable and equitable forest management at the local level; and (ii) make recommendations for future SVBC activities.	<a href="http://cmsdata.iucn.org/downloads/vn_flegt_assessment_report_en.pdf">http://cmsdata.iucn.org/downloads/vn_flegt_assessment_report_en.pdf</a>
Techera, E. (2010). <i>Legal Pluralism, Customary Law and Environmental Management: The Role of International Law for the South Pacific</i> . Macquarie University Law School Legal Studies Working Paper No. 2010-01. Sydney: Macquarie University Press	This paper considers the international law and international environmental law instruments that address Indigenous customary law and Indigenous involvement in conservation and sustainable use of resources. The way forward is explored and suggestions made as to how international law could better address the needs of the South Pacific island nations through engagement with the issue of legal pluralism and establishment of a global and/or regional institution.	<a href="http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1545527_code841223.pdf?abstractid=1545527&amp;mirid=4">http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1545527_code841223.pdf?abstractid=1545527&amp;mirid=4</a>
Teshome, T. (2005). <i>Harmful Traditional Practices Under Ethiopian Laws</i> . Addis Ababa: Ethiopian Women Lawyers Association.	Abstract unavailable.	Unable to find online access.
Tobin, B. and Swiderska, K. (2001) <i>Speaking in Tongues: Indigenous participation in the development of a sui generis regime to protect traditional knowledge in Peru</i> . London: IIED	Peru was the first country to develop a sui generis regime to protect the traditional knowledge of its indigenous people. This report examines the process of indigenous participation in the development of the law (1996-2000), which culminated in the training of indigenous facilitators and preparation of information materials for consultation at regional level. Peru's experience highlights the critical need for broad and active indigenous participation in order to ensure that their rights as traditional knowledge holders are fully and effectively protected, and to avoid the risk of designing measures that could accelerate the loss of traditional knowledge. The report also identifies recommendations for securing indigenous participation in policy making, including key principles and steps.	<a href="http://pubs.iied.org/pdfs/9059IIE D.pdf?">http://pubs.iied.org/pdfs/9059IIE D.pdf?</a>

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Tobin, B. (2004). <i>Customary law as the basis for Prior Informed Consent of Local and Indigenous Communities</i> . International Expert Workshop on Access to Genetic Resources and Benefit Sharing, Cuernavaca, October 24-27 2004	This short paper provides an overview of the manner in which customary law can help to regulate access to genetic resources and traditional knowledge, the challenges for recognition of customary law and the need for more in-depth study regarding its relationship with national and international law. It concludes with a proposal and suggested areas of research for a wide ranging comparative study of customary law and its relationship with positive law, biodiversity conservation, protection of traditional knowledge and human rights.	<a href="http://www.ias.unu.edu/binaries/2/Tobin_PIC_Customary_Law.doc">http://www.ias.unu.edu/binaries/2/Tobin_PIC_Customary_Law.doc</a> <a href="http://www.ias.unu.edu/sub_page.aspx?catID=67&amp;ddIID=69">http://www.ias.unu.edu/sub_page.aspx?catID=67&amp;ddIID=69</a>
Tobin B. (2009) Setting Protection of Traditional Knowledge to Rights: Placing human rights and customary law at the heart of traditional knowledge governance. In Kamau, E. C. and G. Winter (eds.) <i>Genetic Resources, Traditional Knowledge and the Law: solutions for Access and Benefit Sharing</i> , Earthscan, pages 101-118	This paper examines the importance of traditional knowledge for the realization of indigenous peoples' human rights, including rights to food, health, culture, self-determination and participation in decision making. It examines the treatment of customary law in national and international protection of traditional knowledge, examining in particular the case of Peru's sui generis traditional knowledge law and experience with bioprospecting contracts. It concludes that if traditional law and policy is to empower rather than disenfranchise indigenous peoples it will need to build functional interfaces between national and international law and customary legal regimes.	Preview only: <a href="http://www.earthscan.co.uk/?tabid=74768&amp;v=192">http://www.earthscan.co.uk/?tabid=74768&amp;v=192</a>
Tobin B. (2009) The Role of Customary Law and Practice in the Protection of Traditional Knowledge Related to Biological Diversity. In Antons, C. (ed.), <i>Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region</i> . The Netherlands: Kluwer Law International. Pages 127-156	This paper examines protection of traditional knowledge by the Convention on Biological Diversity and World Intellectual Property Rights Organization, as well as under international human rights law. It discusses the potential elements of a misappropriation regime, disclosure of origin, certificates of origin, databases and registers as a means to protect traditional knowledge, It also examines the challenges to be addressed in securing recognition for the role of customary law and traditional knowledge protocols in protection of traditional knowledge at the national level and in foreign jurisdictions. It concludes that effective protection will require an intricate web of alliances, legal obligations, new working practices and relationships, arguing that effective protection of traditional knowledge requires a clear vision of the real threats which it faces, including inappropriate government development programs, organized religion, Extractive industries and biopiracy.	Unable to find online access
Tobin, B. (2010) "The Law Giveth and the Law Taketh Away": The Case for Recognition of Customary Law in International ABS and Traditional Knowledge Governance'. <i>Policy Matters</i> 17: 16-25	Historically, international law has served as a legitimizing tool for colonialism and abrogation of Indigenous peoples' rights. Developments in international human rights law over the past 50 years have at last recognized Indigenous peoples' rights to their lands, territories, resources, knowledge, customs, laws, and, most importantly, self-determination. The extent of these rights has been most clearly articulated in the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Protocol on access to genetic resources and benefit sharing (ABS), which is currently being finalized by the Working Group on ABS under the auspices of the Convention on Biological Diversity, is the first international instrument to be negotiated since the adoption of UNDRIP that directly addresses Indigenous peoples' human rights. The extent to which the ABS Protocol recognizes and reflects the rights set out in UNDRIP will be an important indicator of the international community's commitment to the realization of Indigenous peoples' human rights and recognition of the fundamental role that customary law plays in ABS and traditional knowledge governance. Negotiation of the ABS Protocol provides an important opportunity for the international community to correct, at least in part, the historic abuse of Indigenous peoples under international law. The paper concludes that good legal governance, capable of securing equitable benefit sharing and the protection of subsisting native title rights over genetic resources and traditional knowledge, requires a 'rule of law' based upon multicultural legal pluralism, which recognizes and draws upon sources of legal principles, equity, contract, and dispute resolution found in both customary and positive legal regimes.	Available through subscription to online databases

Citation	Description	Access
Tobin, B. and Taylor, E. (2009). <i>Across the Great Divide: A case study of complementarity and conflict between customary law and TK protection legislation in Peru</i> . Initiative for the Prevention of Biopiracy Research Documents, Year IV, No. 11. Lima: Sociedad Peruana de Derecho Ambiental	This study provides a detailed study of the importance of traditional knowledge and its relationship with customary law. Section I, explores the nature and characteristics of customary law, its interrelationship with positive law, its role in regulating access to genetic resources, and the need to secure greater gender equality and equity. Section II, analyzes international protection of traditional knowledge under the human rights law, the CBD, WIPO, WTO and the Andean Community. Section III, examines Peru's sui generis TK regime, and the impact of the US Peruvian Free Trade Agreement on protection of TK. Section IV provides case studies of customary law's role in negotiation of the Peru-ICBG international bioprospecting agreement and in the repatriation of potato varieties to the community run Potato Park. Section V draws comparisons from the case studies and the paper closes with a series of conclusions for effective recognition of customary law in regulation of traditional knowledge.	<a href="http://www.fni.no/ABS/publication-40.html">http://www.fni.no/ABS/publication-40.html</a> <a href="http://www.google.ie/search?q=across+the+great+divide+SPD+A+Peru+&amp;ie=utf-8&amp;oe=utf-8&amp;aq=t&amp;rls=org.mozilla:en-US:official&amp;client=firefox-a">http://www.google.ie/search?q=across+the+great+divide+SPD+A+Peru+&amp;ie=utf-8&amp;oe=utf-8&amp;aq=t&amp;rls=org.mozilla:en-US:official&amp;client=firefox-a</a>
van de Sandt, J. (2003). 'Communal Resource Tenure and the Quest for Indigenous Autonomy: On State Law and Ethnic Reorganization in two Colombian Resguardos'. <i>Journal of Legal Pluralism</i> 48: 125-162	This paper aims to address three questions: (1) how the formal recognition of indigenous institutions of communal resource tenure is applied, (2) how this is affecting indigenous communities in practice, and, more generally, (3) how conditions for indigenous territorial autonomy are developing in particular national contexts. It will do so by looking at the case of Colombia, where the 1991 Constitution formally recognized the autonomy of indigenous peoples (communities) in self-governing indigenous territories or resguardos. Based on fieldwork study in southern Colombia from October 2000 to April 2001, the paper will present in turn case studies of two characteristic but quite distinctive resguardo communities, one from the Andean and one from the Amazonian region.	<a href="http://www.jlp.bham.ac.uk/volumes/48/sandt-art.pdf">http://www.jlp.bham.ac.uk/volumes/48/sandt-art.pdf</a>
Vani, M. S. (2002). 'Customary Law and Modern Governance of Natural Resources in India - Conflicts, Prospects for Accord and Strategies'. In Praghan, R. (ed) 2002. <i>Legal Pluralism and Unofficial Law in Social, Economic and Political Development</i> , pp. 409-446. Papers of the XIIIth International Congress, 7-10 April, 2002, Chiang Mai, Thailand, Volume I	This paper explores the historical basis and current status of custom and formal law. The relevance and scope of custom in natural resource management in India is firstly explained. Secondly, the conflicts and adjustments between Customary and formal legal frameworks is reviewed through an exploration of the status and role of custom in traditional Indian Jurisprudence, the process of its being subsumed under Colonial Law, and its place in post-Constitutional natural resource law in India – in the Indian Constitution and other statutes. The impact of the formal legal framework on custom and its implication in natural resource management is assessed. The paper explores the problems and difficulties inherent in evolving a harmonious legal framework – from legal, political, social-economic and civil-society perspectives. The author also suggests some strategies for addressing these problems.	<a href="http://dcapindia.org/pdf/20.pdf">http://dcapindia.org/pdf/20.pdf</a>
World Intellectual Property Organization. (2006). <i>Customary Law &amp; the Intellectual Property System in the Protection of Traditional Cultural Expressions and Traditional Knowledge</i> . Issues Paper, version 3.	This draft paper aims to promote discussion and exploration of the interaction between the customary law and protocols of indigenous and local communities, and systems of intellectual property law. Drawing on WIPO draft provisions on protection of traditional knowledge (TK) and traditional cultural expressions (TCEs) as well as a range of national sui generis laws and conventional IP law, a list of roles for customary law have already been developed or applied in practice is provided.	<a href="http://www.wipo.int/export/sites/www/tk/en/consultations/customary_law/issues-revised.pdf">http://www.wipo.int/export/sites/www/tk/en/consultations/customary_law/issues-revised.pdf</a>
Wynter, P. E. (1993). 'Legalize it!: Community participation in natural resource management'. <i>Unasylva</i> 175: 23-28	In many countries in Africa, constitutional changes to open the way for democratization are providing an opportunity for local practices and institutions to enter the administrative and legal frameworks that determine natural resource management. If national forest services are to devolve management responsibilities to the district and village levels, then village institutions need to be recognized and strengthened legally and administratively. This article describes an example of village land-use institutions on the small island of Inhaca in Mozambique and draws some conclusions regarding the future of the country's resource management.	<a href="http://www.fao.org/docrep/v1500e/v1500e06.htm#legalize%20it!:%20community%20participation%20in%20natural%20resource%20management">http://www.fao.org/docrep/v1500e/v1500e06.htm#legalize%20it!:%20community%20participation%20in%20natural%20resource%20management</a>

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Zerner, C. (1994). 'Through a Green Lens: The Construction of Customary Environmental Law and Community in Indonesia's Maluku Islands'. <i>Law &amp; Society Review</i> 28(5): 1079-1122	This article analyses changes in the ways Dutch colonial officials, Indonesian government officials, and environmental NGOs have interpreted Moluccan customary law and local institutions. Dutch colonial accounts of sasi, a generic name for a historic family of institutions, laws, and ritual practices that regulated access to fields, reefs, and rivers, suggest that sasi was a synthetic, highly variable body of practices linked to religious beliefs and local cultural ideas of nature.	<a href="http://www.jstor.org/pss/3054024">http://www.jstor.org/pss/3054024</a>



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