

Customs and Constitutions:

State recognition of customary law around the world

Katrina Cuskelly

DRAFT

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Introduction

Customary law is “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.”¹ 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”.²

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.³ 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.⁴ 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 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.⁵ 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.⁶

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 conflict between statutory regimes and customary law. This may be partially explained

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

² 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

³ 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.

⁴ 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

⁵ 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.

⁶ 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

by the fact that customary law may be seen to be a challenge to a nation's sovereignty.⁷ 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.⁸ 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.⁹ 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.¹⁰

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 law prevails over conflicting customary law, unless there is constitutional protection.¹¹

Due to the time available, 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.

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 management, 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.

⁷ 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

⁸ Tobin and Taylor, above n 2

⁹ Callies, Orebech and Petersen, above n 6

¹⁰ Benjamin, C. E. (2008). 'Legal Pluralism and Decentralization: Natural Resource Management in Mali'. *World Development* 36(11): 2255-2275

¹¹ 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

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 Flora¹² and the Convention on Migratory Species¹³ both recognize, in their preambles, the value of wild animals from a cultural perspective. Similarly, the Ramsar Convention¹⁴ acknowledges the cultural importance of wetlands. The Convention on Migratory Species preserves rights to traditional subsistence hunting.¹⁵

The Convention on Biological Diversity¹⁶ calls on parties to “protect and encourage customary use of biological resources in accordance with traditional cultural practices.”¹⁷ Additionally, it calls for 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 such.¹⁸

International human rights agreements and declarations contain provisions on indigenous rights relevant to natural resource management. The Indigenous and Tribal Populations Convention¹⁹ 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 of their lands. The Declaration on the Rights of

¹² 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).

¹³ 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 (accessed 6 September 2010).

Ratification status is available on-line: http://www.cms.int/about/part_lst.htm (accessed 6 September 2010).

¹⁴ 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 (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 (accessed 6 September 2010).

¹⁵ Convention on Migratory Species art III(5)(c)

¹⁶ 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).

¹⁷ Convention on Biological Diversity art 10(c)

¹⁸ Convention on Biological Diversity art 8(j)

¹⁹ 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.

Indigenous Peoples²⁰ similarly recognizes the rights of indigenous people to traditional lands, including respect for their traditions, customs and land tenure systems. The Earth Charter²¹ 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.²²

²⁰ United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007, G.A. res. 61/295, U.N. GAOR, 107th 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 Accessed 6 September 2010.

²¹ 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).

²² Universal Declaration of Human Rights, 10 December 1948, Article 17. G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948). Available on-line: <http://www.un.org/en/documents/udhr/index.shtml> Accessed 6 September 2010.

²² 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, 20th Sess., Supp. No. 14, at 47. Available on-line: <http://www2.ohchr.org/english/law/cerd.htm> Accessed 6 September 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.

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 contained anti-discrimination or equality provisions that could potentially apply to customary law. In some countries, these provisions appear to have been construed to preclude the application of customary law, as evidenced by sections stating that anti-discrimination provisions do not apply to laws providing for the application of customary law.²³ 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'.

The author located 190 current national written constitutions worldwide by using online databases. Of these, 18 constitutions were only available in languages other than English, with no translation located.²⁴ Due to resource and time constraints for this study, those constitutions were not considered in the analysis. In two cases, other authors had identified specific articles in constitutions for which there is no available English translation as being relevant; those provisions were considered in the analysis.²⁵ There may be other relevant provisions of these two constitutions that were not identified. All of this considered, out of a potential 172 constitutions, 104 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. 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.

²³ 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)

²⁴ Bolivia, Burkina Faso, Burundi, Central African Republic, Cote d'Ivoire, Democratic Republic of the Congo, Dominican Republic, Ecuador, El Salvador, Gabon, Guatemala, Honduras, Monaco, Nicaragua, Panama, Sao Tome and Principe, Togo and Uruguay

²⁵ Democratic Republic of the Congo and Guatemala

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 of such provisions ranges from a duty on the State to protect and promote culture or traditions,²⁶ to a general right or freedom to culture or tradition,²⁷ or a more specific right or duty linked to language.²⁸ 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.²⁹

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.³⁰ Ethiopia recognizes customary marriages and allows customary law to be applied in adjudication of disputes relating to personal and family law.³¹ Liberia, Malawi and Namibia all recognize customary marriages, in permitting government regulation of such.³² 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.³³ 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.³⁴

Fourteen African constitutions contain provisions relating to institutional arrangements and customary law.³⁵ These range from a broad recognition of customary authorities or chiefs,³⁶ sometimes including a guarantee of non-abolition of such authorities,³⁷ to more specific arrangements providing for a specific body with specific functions in relation to customary law.³⁸ 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

²⁶ See for example, *Constitution of the Republic of Benin 1990* art 10; *Constitution of the Federal Democratic Republic of Ethiopia 1994* art 91(1); *Constitution of Mozambique 1990* art 53(1); *Constitution of the Republic of Congo 1992* art 35(2); *Transitional Federal Charter for the Somali Republic 2004* arts 1:1(3), 24(6); *Constitution of the Republic of Uganda 1995* art XXIV

²⁷ See for example, *Constitution of the Republic of Benin 1990* art 10; *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 Congo 1992* art 35(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

²⁸ See for example, *Constitution of the Republic of Benin 1990* art 11; *Constitution of Equatorial Guinea 1991* item 4

²⁹ See for example, *Constitution of the Federal Democratic Republic of Ethiopia 1994* 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

³⁰ *Constitution of the Republic of Chad 1996* art 162

³¹ *Constitution of the Federal Democratic Republic of Ethiopia 1994* art 34(4),(5)

³² *Constitution of the Republic of Liberia 1986* art 23(b); *Constitution of the Republic of Malawi 1994* s 22(5); *The Constitution of the Republic of Namibia 1990* art 4(3)(b)

³³ *The Constitution of the Republic of Namibia 1990* art 12(1)(f)

³⁴ *Constitution of the Republic of South Africa 1996* s 15(3)

³⁵ Angola, Botswana, Cameroon, Democratic Republic of the Congo, Ghana, Lesotho, Namibia, Sierra Leone, Somalia, South Africa, Swaziland, Uganda, Zambia and Zimbabwe

³⁶ *Constitution of the Democratic Republic of the Congo 2005* art 207; *Constitution of the Republic of South Africa 1996* s 185; *Constitution of the Republic of Uganda 1995* art 246; *Constitution of Zambia 1996* art 127; *Constitution of Zimbabwe 1979* s 111

³⁷ *The Constitution of Sierra Leone 1991* s 72

³⁸ *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.³⁹ 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.⁴⁰ 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 monarchy⁴¹ and states that traditional government is administered according to Swazi law and custom.⁴² It also establishes a Council of Chiefs, responsible for advising the King on customary issues.⁴³

Instead of providing for separate traditional institutions, some constitutions make provision for representation in established government institutions. Cameroon requires representation of traditional rulers in Regional Councils⁴⁴ and other countries provide for traditional boundaries to be taken into account in the determination of constituencies.⁴⁵ 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.⁴⁶

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 courts⁴⁷ 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 order⁴⁸ and Liberia requires courts to apply both statutory and customary laws.⁴⁹ 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.⁵⁰ Customary law jurisdiction is sometimes expressly limited to civil cases, and excluded from operation in criminal cases.⁵¹ 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.⁵² 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.⁵³ Another form of integration is seen in the Sierra Leone constitution, which defines common law as including rules of customary law.⁵⁴ On

³⁹ *Constitution of the Republic of Ghana 1992* arts 272, 274

⁴⁰ *The Constitution of the Republic of Namibia 1990* art 102(5)

⁴¹ *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)

⁴² *The Constitution of the Kingdom of Swaziland 2005* s 227

⁴³ *The Constitution of the Kingdom of Swaziland 2005* s 251

⁴⁴ See the *African Charter on Human and Peoples Rights*, contained within the *Constitution of the Republic of Cameroon 1972*, art 57(2)

⁴⁵ *The Constitution of Sierra Leone 1991* s 38(3)

⁴⁶ *Transitional Federal Charter for the Somali Republic 2004* arts 30, 71(5)

⁴⁷ See for example, *Constitution of the Federal Democratic Republic of Ethiopia 1994* 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

⁴⁸ *Constitution of the Democratic Republic of the Congo 2005* art 153

⁴⁹ *Constitution of the Republic of Liberia 1986* art 65

⁵⁰ *Constitution of Zimbabwe 1979* s 89

⁵¹ 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

⁵² *Constitution of the Republic of South Africa 1996* s 39(2)

⁵³ *Constitution of the Federal Republic of Nigeria 1999* ss 237(2)(b), 288

⁵⁴ *The Constitution of Sierra Leone 1991* s 170(2)

the other hand, Swaziland removes certain matters of customary law from both the original and appellate jurisdiction of the High Court.⁵⁵

Importantly for natural resource management, ten of the African constitutions contain provisions relating to customary law and land.⁵⁶ Some of these provisions relate to compensation or resettlement in the case of compulsory acquisition of land resulting in displacement of a person holding customary tenure.⁵⁷ Similarly to trust structures favoured in other parts of the world, in Kenya a county council holds land in trust and must give effect to rights of the tribe and its members under customary law.⁵⁸ However, in Ghana, the land is actually vested in the stool⁵⁹ itself and in Uganda customary title is an expressly recognized form of tenure.⁶⁰ Customary tenure in Uganda enables the holder to obtain a certificate of ownership and convert the title to freehold ownership by registering it.⁶¹ In a particularly relevant provision for the purposes of this study, the Malagasy constitution empowers the Fokonolona (village council) to take measures to prevent the destruction of their environment, the loss of their land or cattle, or the loss of their ceremonial heritage.⁶² 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.⁶³

Of only four constitutions that contain provisions on the codification of customary law, three of them were in Africa. Chad's constitution provides that customary rules are applicable only in the communities they are recognized in until they are codified.⁶⁴ The constitution of Madagascar simply states that a law shall establish rules with respect to codification of customs regarding citizenship.⁶⁵ 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 skin⁶⁶ and the National House of Chiefs is required to study, interpret and codify customary law.⁶⁷

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.⁶⁸ A large number of the constitutions prohibit customs that are contrary to some or all of the following: the constitution, statute, human rights,

⁵⁵ *The Constitution of the Kingdom of Swaziland 2005* s 151(8)

⁵⁶ *Constitution of the Republic of The Gambia 1997* s 22(4); *Constitution of the Republic of Ghana 1992* s 267; *Constitution of Kenya 1963* ss 115(2), 117, 118; *The Constitution of Lesotho 1993* s 7(6); *Constitution of the Republic of Madagascar 1992* art 35(1); *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 Republic of Uganda 1995* art 237(3); *Constitution of Zambia 1996* art 16(2)(y); *Constitution of Zimbabwe 1979* s 22(f)

⁵⁷ *Constitution of the Republic of The Gambia 1997* s 22(4); *Constitution of Kenya 1963* ss 117, 118

⁵⁸ *Constitution of Kenya 1963* s 115(2)

⁵⁹ A 'stool' is a political unit (family, clan, confederation) in southern Ghanaian cultures

⁶⁰ *Constitution of the Republic of Ghana 1992* s 267; *Constitution of the Republic of Uganda 1995* art 237(3)

⁶¹ *Constitution of the Republic of Uganda 1995* art 237(4)

⁶² *Constitution of the Republic of Madagascar 1992* art 35(1). Note that this is limited by the condition that the measures must not jeopardise the common interest or public order.

⁶³ *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)

⁶⁴ *Constitution of the Republic of Chad 1996* art 161

⁶⁵ *Constitution of the Republic of Madagascar 1992* art 82(2)(i)

⁶⁶ A 'stool' is a political unit (family, clan, confederation) in southern Ghanaian cultures, while this is called a 'skin' in northern Ghanaian cultures

⁶⁷ *Constitution of the Republic of Ghana 1992* arts 272(b), 274(3)(f)

⁶⁸ *The Constitution of the Republic of Namibia 1990* art 66(2)

rights of women, natural justice, or public order, or other forms of customs that are deemed undesirable.⁶⁹ The constitution of Swaziland provides for interpretation of customary law in a manner consistent with the constitution.⁷⁰ 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.⁷¹ 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.⁷² 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.⁷³

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.⁷⁴ 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.⁷⁵ A number also state that the right to legal representation does not apply to offences under customary law.⁷⁶ Other constitutions provide a definition of 'law' as including customary law or unwritten law.⁷⁷ 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.⁷⁸

2. Meso and South America

Half of the twenty Meso and South American constitutions contained provisions on customary law. The predominant focus of these provisions was on land tenure. In contrast to the African, Asian and European constitutions, the Meso and South American constitutions had very few provisions on the general preservation of culture.

⁶⁹ *Constitution of the Federal Democratic Republic of Ethiopia 1994 art 35(4); Constitution of the Republic of Ghana 1992 art 26(2); Constitution of the Republic of Liberia 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)*

⁷⁰ *The Constitution of the Kingdom of Swaziland 2005 ss 252(2), 268(1)*

⁷¹ *Constitution of the Republic of Malawi 1994 s 10(2)*

⁷² *The Interim National Constitution of the Republic of Sudan 2005 art 5(2),(3)*

⁷³ *The Constitution of the Kingdom of Swaziland 2005 s 115(6)*

⁷⁴ *Constitution of the Republic of Cameroon 1972 preamble*

⁷⁵ *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)*

⁷⁶ *Constitution of Zambia 1996 art 18(12)(b)*

⁷⁷ *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*

⁷⁸ *Constitution of the Republic of South Africa 1996 sch 4*

Two of the Meso and South American constitutions appear to grant a limited right to self-administration. Only the Peruvian constitution provides for the autonomous organization of indigenous communities.⁷⁹ Paraguay grants Indian peoples the right to apply their systems of political, socioeconomic, cultural and religious organization.⁸⁰

There are also four Latin 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.⁸¹ 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.⁸²

Mexico and Peru have the only provisions relating to customary law and the judiciary. Mexico's constitution does not actually refer to the jurisdiction of the courts in cases dealing with customary law, but provides protection to trials in *amparo* (a remedy for the protection of constitutional rights) 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.⁸³ In Peru, general principles of law and customary law must be applied where there is a gap or deficiency in the law.⁸⁴

Interestingly, the Venezuelan constitution contains the right of native peoples to develop their identity with a reference to their 'habitat,' thereby linking cultural preservation and land rights.⁸⁵ As mentioned above, land features more heavily than any other topic in Latin American constitutions. Nine of the ten Meso and South American countries with constitutional provisions on customary law had some reference to land.⁸⁶ In Argentina, this takes the form of a simple recognition of ownership of lands traditionally occupied.⁸⁷ Guatemala pledges to provide special protection to areas of communal ownership and allows continued administration of it in the manner historically used.⁸⁸ Numerous constitutions recognize rights to traditionally occupied land, communal property or reserves, and state that such are inalienable.⁸⁹ Peru states that native communities are autonomous in their use and free disposal of their land.⁹⁰

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.⁹¹ Paraguay prohibits the removal of indigenous

⁷⁹ *Political Constitution of Peru 1993* art 89

⁸⁰ *Constitution of the Republic of Paraguay 1992* art 63

⁸¹ *Constitution of Colombia 1991* art 246; *Political Constitution of Peru 1993* art 149; *Constitution of the Bolivarian Republic of Venezuela 1999* art 260

⁸² *Constitution of the Republic of Paraguay 1992* art 65

⁸³ *Constitution of Mexico 1917* art 107(II)

⁸⁴ *Political Constitution of Peru 1993* art 139(8)

⁸⁵ *Constitution of the Bolivarian Republic of Venezuela 1999* art 119

⁸⁶ Argentina, Brazil, Colombia, Guatemala, Guyana, Mexico, Paraguay, Peru, Venezuela

⁸⁷ *Constitution of the Argentine Nation 1853* s 75(17)

⁸⁸ *Constitution of the Republic of Guatemala 1985* art 67

⁸⁹ *Constitution of the Federative Republic of Brazil 1988* art 231; *Constitution of Colombia 1991* arts 63, 329, provisional art 55; *Constitution of the Bolivarian Republic of Venezuela 1999* art 119

⁹⁰ *Political Constitution of Peru 1993* art 89

⁹¹ *Constitution of Guyana 1980* s 142(2)

groups from their land without their express consent, as does the Brazilian constitution, with exceptions.⁹² Peru and Colombia both provide that traditional lands are imprescriptible and unseizable.⁹³

In Brazil, traditionally occupied lands are the property of the Union.⁹⁴ Brazil's constitution also provides a definition of 'lands traditionally occupied', encompassing those that have been lived on and used for productive activities, or interestingly, those necessary for preservation of the natural resources on which they rely. Indians traditionally occupying land are entitled to the riches of the soil, rivers and lakes and there are restrictions on mining on such land.⁹⁵

In a style of provision that appears to be unique to Latin America, Mexico actually 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.⁹⁶ Paraguay similarly expresses a right to shared ownership of sufficient land to preserve their lifestyle.⁹⁷ Another unique provision is one of Venezuela's, which provides for a right to traditional medicine and a health system that takes cultures into account.⁹⁸ Venezuela's Constitution also recognizes collective intellectual property rights.⁹⁹

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.¹⁰⁰ However, this is the only provision in the Meso and South American constitutions defining any form of hierarchy.

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 four of those contain relevant provisions, thus giving it the lowest rate of recognition across all of the regions. Furthermore, those provisions identified are not very broad and the level of recognition was 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,

⁹² *Constitution of the Republic of Paraguay 1992* art 64(2); *Constitution of the Federative Republic of Brazil 1988* art 231(6)

⁹³ *Constitution of Colombia 1991* art 63; *Political Constitution of Peru 1993* art 89

⁹⁴ *Constitution of the Federative Republic of Brazil 1988* art 20

⁹⁵ *Constitution of the Federative Republic of Brazil 1988* art 231

⁹⁶ *Constitution of Mexico 1917* art 27(VII)

⁹⁷ *Constitution of the Republic of Paraguay 1992* art 64

⁹⁸ *Constitution of the Bolivarian Republic of Venezuela 1999* art 122

⁹⁹ *Constitution of the Bolivarian Republic of Venezuela 1999* art 124

¹⁰⁰ *Constitution of Costa Rica 1949* art 129

including land claims, despite anything in the Charter of rights and freedoms.¹⁰¹ It also dictates that provisions relating to official languages do not affect customary rights.¹⁰²

The only provisions potentially relevant for customary law found in the Caribbean constitutions are definitions of law which encompassed unwritten law.¹⁰³ None of these expressly recognizes customary law and are therefore not a strong recognition of such.

4. South and East Asia

The rate 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.¹⁰⁴

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 vast majority acknowledge a right to culture generally,¹⁰⁵ or language more specifically,¹⁰⁶ while Singapore and Thailand both place a duty on the State to protect such culture.¹⁰⁷ Interestingly, 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.¹⁰⁸

Malaysia and the Philippines have the only clauses relating to institutional arrangements and land. The Philippines constitution allows creation of a body to advise on policies affecting indigenous communities.¹⁰⁹ In relation to land, different approaches were taken. Malaysia's constitution creates Malay reserves and allows restrictions on dealings with customary land in certain areas.¹¹⁰ However, in the Philippines, rights to ancestral lands

¹⁰¹ *Constitution of Canada 1982* ss 25, 35

¹⁰² *Constitution of Canada 1982* s 22

¹⁰³ 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

¹⁰⁴ *Constitution of the People's Republic of China 1982* art 4(2)

¹⁰⁵ *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 6

¹⁰⁶ *Constitution of Mongolia 1992*, art 8(2)

¹⁰⁷ *Constitution of the Republic of Singapore 1963* art 152; *Constitution of the Kingdom of Thailand 2007* s 289

¹⁰⁸ *Constitution of the Kingdom of Thailand 2007* s 66

¹⁰⁹ *Constitution of the Republic of the Philippines 1987* art XVI S 12

¹¹⁰ *Constitution of Malaysia 1957* arts 89, 90

are recognized, along with customary laws determining property rights.¹¹¹ Further, the duty on the State to apply stewardship principles is subject to the rights of indigenous communities to their ancestral lands.¹¹²

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.¹¹³ 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.¹¹⁴ As with other constitutions around the world, some of the South and East Asian constitutions contain definitions of 'law' that recognize customary law.¹¹⁵

5. West Asia

In the second lowest rate of recognition of customary law, only four of the fourteen West Asian constitutions contained 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,¹¹⁶ while the Syrian Arab Republic phrases this in terms of a right to participate in cultural life.¹¹⁷ In a uniquely worded provision, Qatar requires all who enter its territory to observe established customs and traditions.¹¹⁸

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 Supreme Court or a High Court unless otherwise provided.¹¹⁹ It also expressly recognizes custom and usage in the definition of law, but states that any custom contrary to the constitution is void.¹²⁰

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 members from the nomads be present in the House of Elders.¹²¹

¹¹¹ *Constitution of the Republic of the Philippines 1987* art XII S 5

¹¹² *Constitution of the Republic of the Philippines 1987* art XIII s 6

¹¹³ *Constitution of India 1949* arts 371A, 371G

¹¹⁴ *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

¹¹⁵ *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)

¹¹⁶ *Constitution of the Islamic Republic of Pakistan 1999* art 28

¹¹⁷ *Constitution of the Syrian Arab Republic 1973* art 26

¹¹⁸ *Constitution of the State of Qatar* art 57

¹¹⁹ *Constitution of the Islamic Republic of Pakistan 1999* art 247

¹²⁰ *Constitution of the Islamic Republic of Pakistan 1999* arts 8, 203B

¹²¹ *The Constitution of the Islamic Republic of Afghanistan 2004*, art. 84

6. Oceania

Twelve Oceanic constitutions had provisions relevant to customary law. A large proportion of these dealt with institutional arrangements and land. There were 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.¹²²

Institutional provisions in Oceania appear to take a similar format 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.¹²³ The constitution of the Marshall Islands contains provisions relating to a Council of Iroij, members of which are appointed according to customary law and the functions of which include requesting reconsideration of any Bill affecting customary law.¹²⁴ Palau and Vanuatu also establish similar councils to consider and advise on matters of customary law and their interaction with the Constitution and the law.¹²⁵

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.¹²⁶ As seen in some of the African constitutions, it requires the boundaries of constituencies to be altered in recognition of traditional areas.¹²⁷ Tuvalu's constitution contains a similar provision on constituency boundaries.¹²⁸

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.¹²⁹ 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.¹³⁰ In a strong provision, the constitution of Micronesia requires that all court decisions be consistent with Micronesian customs and traditions.¹³¹ 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

¹²² *Constitution of the Republic of the Marshall Islands 1979* art X, s 2

¹²³ *Constitution of the Federated States of Micronesia 1975* art V s 1; *Constitution of the Republic of Palau 1979* art V s 1

¹²⁴ *Constitution of the Republic of the Marshall Islands 1979* art III ss 1-3

¹²⁵ *Constitution of the Republic of Palau 1979* art VIII, s 6; *Constitution of the Republic of Vanuatu 1980* arts 29, 30

¹²⁶ *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

¹²⁷ Ss 52, 185

¹²⁸ *Constitution of Tuvalu 1986* s 83(2)(c)

¹²⁹ *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

¹³⁰ *Constitution of the Cook Islands 1965* art 48(3)

¹³¹ *Constitution of the Federated States of Micronesia 1975* art XI, s 11

binding on the court is inconsistent with applicable custom.¹³² Where there is no applicable law in a Vanuatu court, it must determine the matter in conformity with custom.¹³³ In Tuvalu, a court may have regard to traditional practices in determining whether an act is reasonably justified.¹³⁴ Vanuatu also provides for the appointment of persons knowledgeable in customary law to the courts, and methods of ascertaining customary law to be prescribed.¹³⁵

Provisions relating to customary land rights take a variety of forms in Oceania. In a provision similar to those seen in Latin 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.¹³⁶ Samoa similarly recognizes customary tenure and states that it is inalienable.¹³⁷ Papua New Guinea expressly allows taking possession or acquisition of land in accordance with custom.¹³⁸ Fiji's constitution is unique in providing constitutional recognition of traditional fishing rights, along with the right to an equitable share of royalties.¹³⁹

Vanuatu has the most expansive provisions seen, stating that all land belongs to the indigenous owners and their descendants and that custom forms the basis of ownership and use of land.¹⁴⁰ 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.¹⁴¹ It also contains an interesting provision relating to redistribution of land, stating that the government may purchase land from customary holders in order to transfer such ownership to the indigenous citizen of an over-populated island.¹⁴²

Again similarly to Latin American and African constitutions, the Solomon Islands has provisions relating to compulsory acquisition of customary interests in land.¹⁴³ The Papua New Guinean constitution contains a unique provision, in exempting unjust deprivation of property provisions when recognizing claimed title where there is a dispute over whether it was validly acquired from the customary owners.¹⁴⁴ Samoa and Vanuatu both establish a specific body responsible for hearing and determining claims relating to customary interests in land.¹⁴⁵

The relationship between customary law and statute is interesting, and different from that seen elsewhere, in many of the Oceanic countries. Palau expressly states that statute and traditional law shall be equal, that where there is conflict statute prevails, but

¹³² *Constitution of the Independent State of Papua New Guinea 1975* sch 2.10(1)

¹³³ *Constitution of the Republic of Vanuatu 1980* art 47(1)

¹³⁴ *Constitution of Tuvalu 1986* s 15(5)

¹³⁵ *Constitution of the Republic of Vanuatu 1980* art 51

¹³⁶ *Constitution of the Republic of the Marshall Islands 1979* art X s 1

¹³⁷ *Constitution of the Independent State of Western Samoa 1960* art 101, 102

¹³⁸ *Constitution of the Independent State of Papua New Guinea 1975* s 53(5)(d)

¹³⁹ *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

¹⁴⁰ *Constitution of the Republic of Vanuatu 1980* arts 73, 74

¹⁴¹ *Constitution of the Republic of Vanuatu 1980* art 79

¹⁴² *Constitution of the Republic of Vanuatu 1980* art 81

¹⁴³ *Constitution of the Solomon Islands 1978* s 112

¹⁴⁴ *Constitution of the Independent State of Papua New Guinea 1975* s 54

¹⁴⁵ *Constitution of the Independent State of Western Samoa 1960* art 103; *Constitution of the Republic of Vanuatu 1980* art 78

that statute shall only prevail to the extent it is not inconsistent with the underlying principles of traditional law.¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸ Vanuatu's Constitution contains very similar provisions.¹⁴⁹

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.¹⁵⁰

Micronesia requires the consideration of local custom in defining crimes and their penalties.¹⁵¹ 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.¹⁵² 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.¹⁵³ Vanuatu appears to implicitly accept customary criminal law, prohibiting retrospective application of offences under written or customary law.¹⁵⁴

Fiji's constitution provides special procedures for the amendment of statutes relating to indigenous peoples.¹⁵⁵ It also requires parliament to provide for the application of customary laws and traditional dispute resolution,¹⁵⁶ and along with the Solomon Islands, requires parliament to have regard to customs and usages.¹⁵⁷ 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.¹⁵⁸

7. East Europe, North and Central Asia

The constitutions of East Europe, North and Central Asia ("EENCA") share the highest rate of recognition of customary law with the Oceanic constitutions. 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.

¹⁴⁶ *Constitution of the Republic of Palau 1979* art V s 2

¹⁴⁷ *Constitution of the Independent State of Papua New Guinea 1975* sch 2.1; *Constitution of the Solomon Islands 1978* sch 3 s 3

¹⁴⁸ *Constitution of the Independent State of Papua New Guinea 1975* sch 2.2(1); *Constitution of the Solomon Islands 1978* sch 3 s 2

¹⁴⁹ *Constitution of the Republic of Vanuatu 1980* art 95(2),(3)

¹⁵⁰ *Constitution of the Independent State of Papua New Guinea 1975* sch 1.2(1)

¹⁵¹ *Constitution of the Federated States of Micronesia 1975* art IX, s 2(p)

¹⁵² *Constitution of the Federated States of Micronesia 1975* art V, s 2

¹⁵³ *Constitution of Tuvalu 1986* s 15(5)

¹⁵⁴ *Constitution of the Republic of Vanuatu 1980* art 5(2)(f)

¹⁵⁵ *Constitution of Fiji 1997* s 185 – note: this Constitution was abrogated in 2009 but has not yet been replaced so is used for analysis

¹⁵⁶ *Constitution of Fiji 1997* s 186(1)

¹⁵⁷ *Constitution of Fiji 1997* s 186(2); *Constitution of the Solomon Islands 1978* s 75

¹⁵⁸ *Constitution of the Republic of the Marshall Islands 1979* art III, s 2

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.¹⁵⁹ Provisions specific to ethnic groups are found in the Slovenian and Lithuanian constitutions, with Slovenia establishing a right to self-government and Lithuania allowing ethnic groups to manage their own affairs in relation to culture.¹⁶⁰ The Ukraine establishes a right to self-government for territorial communities.¹⁶¹

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.¹⁶² 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.¹⁶³ Conversely, the Ukrainian constitution states that rights of indigenous peoples are determined solely by Ukrainian law.¹⁶⁴ Kyrgyzstan simply preserves customs and traditions other than those contrary to human rights.¹⁶⁵ It is notable that this provision does not appear to make custom subordinate to the constitution or statutory law.

The provisions on institutional arrangements in EENCA do not recognize traditional authorities at all, but rather 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.¹⁶⁶ Hungary establishes the Parliamentary Ombudsmen for the Rights of National and Ethnic Minorities to investigate infringement of their rights.¹⁶⁷

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 ensurance of neighbourliness in accordance with law or custom.¹⁶⁸

8. West Europe

The constitutional recognition of customary law across West Europe was quite broad, despite not being particularly strong. Roughly the same number of countries have provisions on self-administration, protection of culture, and institutional arrangements.

¹⁵⁹ *Constitution of the Republic of Estonia 1996* s 50

¹⁶⁰ *Constitution of the Republic of Slovenia 1991* art 64; *Constitution of the Republic of Lithuania 1992* art 45

¹⁶¹ *Constitution of Ukraine 1996* art 140

¹⁶² *The (First) Constitution of the Republic of Armenia 2005* art 37; *Constitution of the Azerbaijan Republic 1978* art 40, *Constitution of Georgia 1995* art 34; *Constitution of the Republic of Kazakhstan 1995* art 19(2); *Constitution of the Republic of Uzbekistan 1991* art 4; *Constitution of the Republic of Belarus 1994* art 15

¹⁶³ *Constitution of the Russian Federation 1993* art 72(1)(l)

¹⁶⁴ *Constitution of Ukraine 1996* art 92(3)

¹⁶⁵ *Constitution of the Kyrgyz Republic 2007* art 16(1)

¹⁶⁶ *Constitution of the Republic of Montenegro 2007* art 79(9),(13)

¹⁶⁷ *Constitution of the Republic of Hungary* art 32B

¹⁶⁸ *Constitution of Romania 1991* art 41(6)

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.¹⁶⁹ Additionally, custom and usage are to be taken into account in determining the jurisdiction of Quarts and Veinats (lesser territorial units).¹⁷⁰ Finland provides for the 'linguistic and cultural self-government' of the Sami in their native region.¹⁷¹ 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).¹⁷²

The Spanish constitution is the only 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.¹⁷³

In a provision particularly relevant to this study, 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.¹⁷⁴

The French constitution recognizes customary law in relation to citizenship, the electoral system, employment and personal status, and requires the Deliberative Assembly of New Caledonia to determine rules on these issues as laid down in customary law.¹⁷⁵

¹⁶⁹ *Constitution of Andorra 1993* art 79

¹⁷⁰ *Constitution of Andorra 1993* art 84

¹⁷¹ *Constitution of Finland 1999* s 121(4)

¹⁷² *Constitution of Spain 1978* ss 143, 149

¹⁷³ *Constitution of Spain 1978* s 125

¹⁷⁴ *Constitution of the Republic of Turkey 1982* art 170

¹⁷⁵ *Constitution of France 1958* art 77

Findings and conclusions

This section begins by identifying trends noticed 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 management is then discussed. Finally, areas that were identified in the course of this study as requiring further research are discussed.

Constitutional provisions on customary law could generally be categorised under nine headings, plus an additional miscellaneous category. These headings are: 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.

Of these categories, the most frequently encountered is the protection of culture, with 55 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. 33 constitutions contained provisions relating to institutional arrangements and 36 included provisions on the relationship between customary and other national or international law.

Of particular interest for natural resource management, 32 constitutions had provisions on customary law relating to land tenure and resource rights. Africa, Meso and South America and Oceania accounted for 28 of these countries, all in roughly equal proportion. Tenure systems established range from a trust arrangement with land held for the benefit of communities, to *sui generis* customary tenure.¹⁷⁶ Brazil and Mexico expressly recognize rights not only to the land but also to the soil, waters and forests.¹⁷⁷ 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.¹⁷⁸

Interestingly, there were also some provisions directly tying natural resource management and customary rights to land. Madagascar expressly allows a village council to take measures to protect its environment.¹⁷⁹ 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.¹⁸⁰ Brazil's customary land rights are based around lands traditionally occupied, the definition of which

¹⁷⁶ For an example of trust arrangements, see *Constitution of Kenya 1963* s 115(2); for *sui generis* customary tenure see *Constitution of the Republic of Uganda 1995* art 237(3)

¹⁷⁷ *Constitution of the Federative Republic of Brazil 1988* art 231; *Constitution of Mexico 1917* art 27(VII)

¹⁷⁸ *Constitution of Mexico 1917* art 27(VII); *Constitution of the Republic of Paraguay 1992* art 64

¹⁷⁹ *Constitution of the Republic of Madagascar 1992* art 35(1). Note that this is limited by the condition that the measures must not jeopardise the common interest or public order.

¹⁸⁰ *Constitution of Romania 1991* art 41(6)

encompasses lands indispensable to preservation of environmental resources necessary for their well being.¹⁸¹

However, there was a notable absence of provisions recognizing customary user rights independent of occupation of land. Fiji was alone in recognizing customary fishing rights.¹⁸² None of the other constitutions examined contain any recognition of customary right 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.¹⁸³

Institutional arrangements may also have particular impact on natural resource management. 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 contained the greatest number of provisions on institutional arrangements. Oceania also contained a number of provisions in this area, similar to those of African constitutions. Broadly, the institutional arrangements ranged from involvement of indigenous peoples or minorities in existing institutions,¹⁸⁴ to the establishment of specific bodies with specified functions in relation to customary law,¹⁸⁵ to broad recognition of some or all existing traditional authorities.¹⁸⁶ These provisions indicate potential institutions or authorities involved, or which should be involved, in natural resource management, and provide additional means of integrating customary systems of resource use with statutory regulation.

The variety of provisions adopting customary law and regulating the relationship between statutory and customary law may also have implications for natural resource management. Where statute regulates an aspect of natural resource management, such provisions may dictate whether customary rules can still apply. The majority of provisions established customary law as subordinate to the constitution,¹⁸⁷ with some

¹⁸¹ *Constitution of the Federative Republic of Brazil 1988*, art 231

¹⁸² *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

¹⁸³ 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 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)

¹⁸⁴ 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)

¹⁸⁵ *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

¹⁸⁶ *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)

¹⁸⁷ *Constitution of the Federal Democratic Republic of Ethiopia 1994* 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

also expressly identifying it as subordinate to statutory law.¹⁸⁸ 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.¹⁸⁹ Papua New Guinea and the Solomon Islands establish that customary law is superior to imported colonial common law and equity.¹⁹⁰ However, the strongest provision is that found in Palau's constitution. It states that statutory and customary law 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.¹⁹¹

Having discussed the impact of the provisions on customary law identified in the constitutions, it is important to emphasise that a failure to have detailed, or any, provisions on customary law does not render it unimportant or irrelevant. As long as there is no provision expressly excluding the application of customary law, the absence of provisions may in fact indicate that there is further room to develop the relationship between customary and State law. Where there is some acknowledgement of customary law, it may be argued that any other aspect of customary law is impliedly not recognized. However, where there is no provision at all, this cannot be argued.

¹⁸⁸ *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

¹⁸⁹ *Constitution of the Democratic Republic of East Timor 2002* s 2(4)

¹⁹⁰ *Constitution of the Independent State of Papua New Guinea 1975* sch 2.2(1); *Constitution of the Solomon Islands 1978* sch 3 s 3

¹⁹¹ *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.

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, there were no provisions on customary law in New Zealand's constitution. Therefore, there may be strong recognition of customary law, even if it is not found in the constitution. 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 management. 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, and 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.

Further research into the implications of provisions relating to land tenure would be valuable. Land tenure has implications for natural resource management 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 limited knowledge of the historical background of the European countries, many provisions appeared ambiguous as to whether they in fact referred to 'customary law' as sought in this study. Due to the traditions of the European communities, customary law may already be contained in legislation with it expressly being recognized as such. Therefore, the provisions discussed above in relation to European constitutions may not adequately represent the extent of European provisions on customary law. 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 management 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;¹⁹² however, further research would be beneficial in understanding natural resource management by such communities.

¹⁹² 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

Annex A – Bibliography of constitutional provisions

DRAFT

Region	Constitution	Scope of Provision
Africa	Algeria 1976	Art 31: removal of obstacles which impede effective participation in cultural life
Africa	Angola 1992	Art 90: The National Assembly shall have sole legislative powers on:... (k) participation of traditional authorities and citizens in local government
Africa	Benin 1990	Art 10: duty to safeguard and promote cultural traditions Art 11: freedom to develop their own culture
Africa	Botswana 1966	Art 10: (12)(b) may prohibit legal representation in offences under customary law... (e) a person may be convicted of a crime that is not written if it is customary law to which the person is subject Art 15(4)(d): laws may be discriminatory in so far as they make provision for the application of customary law, whether that is to the exclusion of other laws or not Art 65(2): constituency boundaries may take account of boundaries of Tribal Territories Art 78: ex-officio members of House of Chiefs shall be Chiefs of particular tribes Art 85(4): the House of Chiefs is entitled to discuss any matter which it considers desirable to take cognizance in the interests of tribes and tribal organisation Art 88(2): the National Assembly shall not proceed upon any Bill that would affect the organisation, powers or administration of customary courts; or customary law; or tribal organisation until it has been referred to the House of Chiefs
Africa	Burkina Faso 1991	(In French)
Africa	Burundi 2005	(In French)
Africa	Cameroon 1972	Preamble: the State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law <i>African Charter on Human and People's Rights (contained within the Constitution of Cameroon):</i> Preamble: recognition of 'cultural rights' Art 7(1)(a): fundamental rights as recognised by conventions, laws, regulations and customs in force Art 17: (3) protection of traditional values recognised by the community shall be the duty of the State Art 22: recognition of 'cultural rights' Art 57: (2) the Regional Council shall include representatives of traditional rulers Art 61: Commission shall take into consideration practices consistent with international norms, customs generally accepted as law etc
Africa	Cape Verde 1992	Nil
Africa	Central African Republic 2004	(In French)
Africa	Chad 1996	Art 26: forbids customary rules concerning collective penal responsibility Art 161: customary rules are applicable only in communities they are recognised until codified Art 162: customary rules relating to matrimonial regimes and inheritances can only be applied with consent of the parties. The same applies where there is a conflict of customary rules Art 163: customary reparation can not be an obstacle to public action
Africa	Comoros 2001	Nil
Africa	Congo 1992	Art 35: right to culture; duty to safeguard and promote cultural traditions Art 50: guarantee of rights of minorities
Africa	Cote d'Ivoire 2000	(In French)
Africa	Democratic Republic of the Congo 2005	Article 153: Courts apply customary law that is not contrary to public order. Article 207: Customary authority is recognized and is devolved in accordance with local custom, as long as it does not contradict the Constitution, law, and public order.
Africa	Djibouti 1992	Nil
Africa	Egypt 1971	Art 12: safeguarding and protecting traditions and abiding by high standards of historical heritage
Africa	Equatorial Guinea 1991	Item 4: aboriginal languages recognised as integral part of culture

Region	Constitution	Scope of Provision
Africa	Eritrea 1997	Nil
Africa	Ethiopia 1994	Art 9: any customary practice which contravenes the Constitution is of no effect Art 34: (4) recognition of marriages under customary laws; (5) allows adjudication of disputes relating to personal and family laws in accordance with customary laws Art 35: (4) elimination of harmful customs. Customs and practices that oppress or cause harm to women are prohibited Art 78: (5) may establish or give official recognition to customary courts pursuant to art 34(5) Art 91: duty to support cultures and traditions compatible with fundamental human rights etc and Constitution
Africa	Gabon 1991	(In French)
Africa	Gambia 1997	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 S 22: (4) where compulsory acquisition of land involves displacement of inhabitant of land occupied under customary law, the Government shall resettle the inhabitants on suitable alternative land with regards to their economic well being and social and cultural value S 32: right to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the Constitution and must not impinge on rights of others or the national interest S 33: (5)(d) anti-discrimination provisions do not apply to any law that makes provision for the application of customary law with respect to any matter in the case of persons who are subject to that law
Africa	Ghana 1992	Art 11: (2) common law comprises the common law, doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature; (3) customary law is the rules of law which by custom are applicable to particular communities Art 26: (1) entitlement to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the Constitution; (2) customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited Art 125: (2) citizens may exercise participation in administration of justice through public and customary tribunals and the jury and assessor systems Art 267: 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. Establishment of Office of Administrator of Stool Lands Art 270: (1) guarantee of institution of chieftancy, together with traditional council as established by customary law and usage; (3) law making provision for (a) determination, in accordance with appropriate customary law and usage, by a traditional council, Regional House of Chiefs, or Chieftancy Committee, of the validity of the nomination, election etc of a person as chief Art 272: National House of Chiefs shall (b) undertake 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 customs and usages with a view to eliminating those that are outmoded and socially harmful Art 274: (3) Regional House of Chiefs shall ... (f) compile customary law and lines of succession applicable to each stool or skin
Africa	Guinea-Bissau 1984	Nil
Africa	Kenya 1963 (note: new draft in process of approval)	S 115: (2) county councils are to hold Trust land for the benefit of persons ordinarily resident on that land and shall give effect to rights, interests or other benefits as may be vested in any tribe, group, family or individual under the African customary law in force and applicable S 117: (2) where a county council sets aside an area of land pursuant to this section, any rights, interests or other benefits that were previously vested in a tribe, group, family or individual under customary law are extinguished ... (4) no setting apart shall have effect unless provision is made by the law for the prompt payment of full compensation to any resident who (a) under customary law has the right to occupy any part of the land... (5) no right, interest or other benefit under customary law shall have effect for (4) so far as it is repugnant to any written law S 118: (4) where land is set aside under this section, (a) any rights, interests or other benefits that were previously vested in a tribe, group, family or individual under customary law are extinguished; (b) the government shall make prompt payment of full compensation to persons as under s117(4)

Region	Constitution	Scope of Provision
Africa	Lesotho 1993	S 7: (6) nothing done under the authority of customary law is in contravention of freedom of movement provisions to the extent that it authorises imposition of restrictions upon any person's freedom to reside in any part of Lesotho S 18: (4)(c) a law may be discriminatory to the extent that it makes provision for the application of customary law in any matter for persons who are subject to that law S 45: application of customary law in choosing the King S 46: application of customary law in choosing a Regent S 154: "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 - (ii) the customary law
Africa	Liberia 1986	Art 2: any custom inconsistent with the Constitution shall be void to the extent of the inconsistency Art 23: (b) legislature shall enact laws to govern devolution of estates and rights of inheritance for spouses of both statutory and customary marriages Art 65: the courts shall apply both statutory and customary laws in accordance with standards enacted by legislature
Africa	Libyan Arab Jamahiriya 1969	Nil
Africa	Madagascar 1992	Art 35: (1) The Fokonolona may take appropriate measures to prevent destruction of their environment, loss of their land, seizure of herds of cattle, or loss of their ceremonial heritage, unless these measures jeopardize the common interest or public order. (2) The coverage and terms of these provisions shall be determined by law. Art 82: (2) the law shall establish rules concerning the drafting and codification of customs regarding citizenship
Africa	Malawi 1994	S 10: (2) in application and development of common law and customary law, the organs of the State shall have due regard to principles of the Constitution S 20: anti-discrimination S 22: (5) provisions on marriage shall apply to all marriages at law, custom and marriages by repute S 24: (2) legislation shall be passed to eliminate customs and practices that discriminate against women S 110: (3) may have traditional local courts presided over by lay persons or chiefs provided that jurisdiction is limited to civil cases at customary law and minor common law and statutory civil cases prescribed by law S 200: all customary law in force on the appointed day shall continue except in so far as it is inconsistent with the Constitution
Africa	Mali 1992	Nil
Africa	Mauritania 1991	Nil
Africa	Mauritius 1968	Nil
Africa	Morocco 1996	Nil
Africa	Mozambique 1990	Art 53: promote development of culture and identity, and guarantee free expression of traditions and values of Mozambican society
Africa	Namibia 1990	Art 4: (3)(b) recognises marriages by customary law providing that nothing in the Constitution precludes Parliament from enacting legislation defining requirements for a marriage by customary law to be recognised Art 12: (1)(f) recognises customary law marriages for purposes of preventing compulsion to testify against a spouse Art 19: right to enjoy, practise, profess, maintain and promote any culture, language, tradition subject to terms of the Constitution and so long as not to impinge on rights of others or national interest Art 66: (1) customary law in force on the date of Independence remains valid to the extent it does not conflict with the Constitution or other statutory law; (2) subject to the Constitution, customary law may be repealed or modified by Act of Parliament Art 102: (5) establishes Council of Traditional Leaders in order to advise the President on the control and utilisation of communal land and all such other matters as referred to it
Africa	Niger 1999	Nil

Region	Constitution	Scope of Provision
Africa	Nigeria 1999	S 237: at least 3 Justices of the Court of Appeal are to be learned in customary law S 245: appeal from Customary Court of Appeal to the Court of Appeal S 265: establishes Customary Court of Appeal of the Federal Capital Territory, Abuja S 280: establishes Customary Court of Appeal for any State that requires it S 282: Customary Court of Appeal of any State exercises appellate and supervisory jurisdiction in civil proceedings involving questions of customary law S 288: (1) President shall have regard to the need to ensure that some of the Justices of the Supreme court and Court of Appeal are learned in customary law; (2)(b) definition of what is meant by 'learned in customary law'
Africa	Rwanda 2003	Art 51: duty to safeguard and promote positive values based on cultural traditions and practices so long as they do not conflict with human rights, public order and good morals Art 145: jurisdiction of the Supreme Court: to provide authentic interpretation of custom which is unwritten and in respect of which the written law is silent Art 201: 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 morals
Africa	Sao Tome and Principe 2003	(In Portuguese)
Africa	Senegal 2001	Nil
Africa	Seychelles 1993	Art 39: recognition of right or take part in cultural life and profess, promote, enjoy and protect the cultural and customary values subject to restrictions as may be provided by law
Africa	Sierra Leone 1991 (note: transitional charter only)	S 27: (4) anti-discrimination provisions shall not apply to any law so far as it makes provision (e) for the application in the case of members of a race or tribe of customary law with respect to any matter S 38: (3) number of inhabitants of a constituency may be different from the population quota in order to take account of the areas and boundaries of Chiefdoms and other administrative or traditional areas S 72: (1) Chieftancy as established by customary law and its non-abolition by legislation is guaranteed and preserved; (2) no provision of law providing for abolition of Chieftancy immediately before entry into force of the Constitution shall have effect unless in an Act and provisions of S 108 shall apply; (3) no law shall be held to be inconsistent with (1) to the extent that it makes provision for determination, in accordance with customary law, of validity of the nomination, election, unseating or replacement of any Paramount Chief S 120: (4) judicature shall consist of ... and other such inferior and traditional courts as Parliament may by law establish S 170: (2) common law includes the rules of customary law including those determined by the Superior Court of Judicature; (3) customary law means the rules of law which by custom are applicable to particular communities S 171: 'law' includes customary law
Africa	Somalia 2004	Art 1:1: (3) encourage unity of Somali people by promoting their cultures, customs and traditions Art 24: (6) promote positive customs and traditions of the Somali people Art 30: involvement of traditional leaders in appointment of members of parliament Art 71: (5) Transitional Government shall restore peace and security etc in co-operation with traditional elders

Region	Constitution	Scope of Provision
Africa	South Africa 1996	<p>S 15: (3) freedom of conscience provisions do not prevent legislation from recognising marriages concluded under any tradition or system of personal or family law, or systems of personal and family law under any tradition</p> <p>S 25: (7) a person or community whose land tenure is not legally secure as a result of past racially discriminatory laws is entitled to tenure which is legally secure or comparable redress</p> <p>S 31: cultural or linguistic communities may not be denied the right to enjoy their culture and use their language and form associations</p> <p>S 39: (2) when developing customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights; (3) Bill of Rights does not deny other rights or freedoms recognised or conferred by customary law to the extent they are consistent with the Bill</p> <p>S 143: (1) provincial constitution may provide for a traditional monarch</p> <p>S 185: establishes a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities</p> <p>S 211: (1) traditional leadership according to customary law is recognised subject to the Constitution; (2) traditional authorities that observe customary law may function, subject to the Constitution and any applicable legislation and customs; (3) the courts may apply customary law subject to the Constitution and any legislation specifically dealing with customary law</p> <p>S 212: (1) legislation may provide for a role for traditional leadership as an institution at a local level; (2) national or provincial legislation may establish houses of traditional leaders and national legislation may establish council of tribal leaders</p> <p>Sch 4: indigenous and customary law, traditional leadership, and administration of indigenous forests, are concurrent national and provincial legislative competence, subject to Ch 12 of the Constitution</p> <p>Sch 6, S 16: every court, including courts of traditional leaders, existing when the Constitution took effect, continues to function and exercise jurisdiction subject to any amendment or repeal of legislation and consistency with the Constitution</p>
Africa	Sudan 2005 (note: interim constitution only)	<p>Art 4: (b) religions, beliefs, traditions and customs are the source of moral strength and inspiration</p> <p>Art 5: (2) nationally enacted legislation shall have as its source the values and customs of the people, including their traditions and religious beliefs; (3) where national legislation has its source as custom then a state, the majority of whose residents do not practice such customs may (a) either introduce legislation allowing practices or institutions consistent with their customs, or (b) refer the law to the Council of States</p> <p>Art 32: (3) the State shall combat harmful customs and traditions which undermine the dignity and status of women</p> <p>Art 47: ethnic and cultural communities have the right to freely enjoy and develop their cultures, to practice their beliefs, use their languages, observe their religions and raise their children within the framework of their cultures and customs</p>

Region	Constitution	Scope of Provision
Africa	Swaziland 2005	<p>Preamble: necessary to blend institutions of traditional law and custom with those of open and democratic society</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 obligation in terms and in the spirit of this Constitution</p> <p>S 5: Succession to King and iNgwenyama is hereditary and governed by the Constitution and Swazi law and custom</p> <p>S 21: (13) a law shall not be held to be inconsistent with (b) legal representation requirements to the extent that the law prohibits legal representation before a Swazi Court or any Swazi court hearing appeals</p> <p>S 26: nothing contained in or done under Swazi law and custom shall be held to be inconsistent with freedom of movement provisions</p> <p>S 77: (3) The Attorney-General shall represent chiefs in their official capacity in legal proceedings</p> <p>S 115: (6) special procedures for Bills which would alter or affect - (a) status, power or recognition of royal appointments; (b) designation, recognition etc of chief or other traditional authority; (c) organisation, powers or administration of Swazi courts or chiefs' courts; (d) Swazi law and custom or its ascertainment; (e) Swazi nation land; or (f) reed dance, regimental system or similar cultural activity or organisation. (7) subject to this section, the matters listed above continue to be regulated by Swazi law and custom</p> <p>S 151: High Court has no original or appellate jurisdiction in matters relating to the office of iNgwenyama or iNdlovukazim, the authorisation of a Regent, appointment etc of a Chief, composition of the Swazi National Council, and the Libutfo system, which shall continue to be governed by Swazi law and custom</p> <p>S 227: Szawi traditional government is administered according to Swazi law and custom. Sets out traditional pillars of monarchy (the King, the Queen Mother, the Princes of the Realm, Advisory Council, Swazi National Council, Chiefs, Senior Prince, Royal Governors), with subsequent sections on appointment etc</p> <p>S 251: (1) establishes Council of Chiefs. (3) responsibilities: (a) advising the King on customary issues and any matter relating to chieftancy, (b) performing functions in s115, (c) performing such other functions as may be assigned by the Constitution or any other law</p> <p>S 252: (2) recognises and adopts Swazi customary law to be applied and enforced as part of the law, subject to the provisions of the Constitution; (3) subs (2) does not apply to any custom that is inconsistent with the 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 any custom, (b) regulate the manner or purpose for which custom may be recognised, applied or enforced, (c) provide for resolution of conflicts of customs or conflicts of personal laws</p> <p>S 261: 'law' includes any instruments having the force of law and any unwritten rule of law</p> <p>S 268: (1) existing law shall be construed with such modification etc as may be necessary to bring it into conformity with the Constitution; (2) 'existing law' means written and unwritten law including customary law</p>
Africa	Togo 1991	(In French)
Africa	Tunisia 1959	Nil
Africa	Uganda 1995	<p>Art XXIV: cultural and customary values which are consistent with fundamental rights, democracy, and the Constitution may be developed and incorporated in aspects of Ugandan life. The State shall - (i) promote cultural values and practices which enhance dignity and well-being, (ii) encourage the development of languages</p> <p>Art 2: (2) if any custom is inconsistent with the Constitution, the Constitution prevails and the custom is void to the extent of inconsistency</p> <p>Art 37: right to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition etc in community with others</p> <p>Art 237: (3) land shall be owned in accordance with the following land tenure systems- (a) customary.. (c) mailo; (4) (a) all citizens owning land under customary tenure may acquire certificates of ownership, (b) land under customary tenure may be converted to freehold land ownership by registration</p> <p>Art 246: (1) institution of traditional or cultural leader may exist in any area in accordance with the culture, customs and traditions or wishes of the people to whom it applies</p>
Africa	United Republic of Tanzania 1998	Nil

Region	Constitution	Scope of Provision
Africa	Zambia 1996	<p>Art 16: (2) provisions relating to compulsory acquisition of land (and compensation) do not apply to laws - ... (y) for the purpose of the administration or disposition of such in implementation of a comprehensive land policy or of a policy designed to ensure that any interests or right enjoyed by Chiefs and persons claiming through them, shall apply with substantial uniformity throughout Zambia;</p> <p>Art 18: (12)(b) nothing in any law shall be held to be inconsistent with provisions on legal representation to the extent that the law prohibits representation before a subordinate court in proceedings for an offence under customary law against a person who is subject to that law</p> <p>Art 23: (4)(d) anti-discrimination provisions shall not apply to any law which makes provision for the application of customary law to members of a particular race or tribe to the exclusion of any law applicable in the case of other persons</p> <p>Art 112: Directives which shall be the Principles of State Policy: (g) take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom and language insofar as they are not inconsistent with the constitution</p> <p>Art 127: (1) Institution of Chief shall exist in any area in accordance with the culture, customs and traditions of the people to whom it applies</p> <p>Art 130: establishes a House of Chiefs as an advisory body to the Government on traditional, customary and any other matters referred to it</p> <p>Art 131: further functions of the House of Chiefs, including (a) considering any Bill dealing with custom or tradition</p>
Africa	Zimbabwe 1979	<p>S 18: (15) a local court shall not be regarded as not being independent and impartial 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 or procedures</p> <p>S 22: nothing in any law shall be held to be in contravention of freedom of movement provisions to the extent that the law makes provision (f) for the imposition of restrictions of residence within Communal Land of persons who are not tribespeople</p> <p>S 23: (3) a law shall not be held to be in contravention of anti-discrimination provisions to the extent that it relates to (b) the application of customary law in any case involving Africans and one or more persons who are not Africans where such persons have consented to the application of customary law</p> <p>S 89: subject to provisions of law relating to application of customary law, the law to be administered in courts shall be the law in force in the Cape of Good Hope on 10 June 1981, as modified by subsequent legislation</p> <p>S 111: (1) there shall be Chiefs to preside over the tribespeople (2) an Act shall provide that the President shall give due consideration to customary principles of succession of the tribespeople in appointing a Chief; (3) there shall be a Council of Chiefs composed so as to ensure equitable representation for the various areas of communal land</p> <p>S 113: "African customary law" means the tribal law and custom of Africans of a particular tribe; "law" means— (c) any unwritten law in force in Zimbabwe, including African customary law; and "lawful" and "lawfully" shall be construed accordingly; "local court" means any court constituted by or under a written law for the purpose of applying African customary law;</p>
East Europe, North and Central Asia	Albania 1998	Art 20: minorities exercise full equality before the law and have right to express their belonging and preserve and develop it.
East Europe, North and Central Asia	Armenia 2005	Art 37: minorities are entitled to preservation of their traditions
East Europe, North and Central Asia	Azerbaijan 1978	Art 40: right to culture, duty to respect historical, cultural and spiritual inheritance, protect historical and cultural memorials
East Europe, North and Central Asia	Belarus 1994	Art 15: State has duty of preserving historic and cultural heritage, and free development of culture of all the ethnic communities Art 52: abide by Constitution and laws and respect national traditions
East Europe, North and Central Asia	Bosnia and Herzegovina 1995	Nil
East Europe, North and Central Asia	Bulgaria 1991	Nil
East Europe, North and Central Asia	Croatia 1990	Nil

Region	Constitution	Scope of Provision
East Europe, North and Central Asia	Czech Republic 1992	Nil
East Europe, North and Central Asia	Estonia 1996	S 50: minorities have the right to establish self-governing agencies as provided for by the National Minorities Cultural Autonomy Act
East Europe, North and Central Asia	Georgia 1995	Art 34: promote development of culture, participation in cultural life, expression and enrichment of cultural originality etc
East Europe, North and Central Asia	Hungary 1949	Art 32B: Parliamentary Ombudsman for the Rights of National and Ethnic Minorities investigates or initiates investigations involving infringement of the rights of national or ethnic minorities Art 68: (2) protection of minorities and ensure fostering of their cultures, use of their native languages
East Europe, North and Central Asia	Kazakhstan 1995	Art 19: right to native language and culture
East Europe, North and Central Asia	Kyrgyzstan 2007	Art 16: folk customs and traditions which don't contradict human rights are supported by the state
East Europe, North and Central Asia	Latvia 1922	Art 114: ethnic minorities have the right to preserve and develop their language and ethnic and cultural identity
East Europe, North and Central Asia	Lithuania 1992	Art 37: right to foster language, culture and customs Art 45: ethnic communities shall independently manage the affairs of their ethnic culture, education, and mutual assistance. They shall be provided support by the State.
East Europe, North and Central Asia	Montenegro 2007	Art 79: right of minorities: includes (1) exercise, protect, develop and express national, ethnic, cultural and religious particularities; (3) use their own language; (9) authentic representation in the Parliament and assemblies of local governments; (13) establish councils for the protection and improvement of special rights
East Europe, North and Central Asia	Poland 1997	Art 35: (1) freedom to maintain and develop language and to maintain customs and traditions and develop culture; (2) right to establish educational and cultural institutions, and participate in resolution of matters connected with their cultural identity
East Europe, North and Central Asia	Republic of Moldova 1994	Art 10: right to preserve, develop and express ethnic, cultural, linguistic and religious identity
East Europe, North and Central Asia	Romania 1991	Art 6: recognition and guarantee of right of minorities to preserve, develop and express their ethnic, cultural, linguistic and religious identity Art 41: (6) right of property compels the observance of duties relating to environmental protection and ensurance of neighbourliness in accordance with law or custom
East Europe, North and Central Asia	Russian Federation 1993	Art 69: guarantee of rights of indigenous small peoples according to universally recognised principles and norms of international law and international agreements Art 72: joint jurisdiction of Russian Federation and its subjects to ... (b) protection of national minorities, ... (l) protect traditional living habitat and traditional way of life of small ethnic communities Art 131: local self-government shall consider historical and other local traditions
East Europe, North and Central Asia	Serbia 1990	Nil
East Europe, North and Central Asia	Slovakia 1992	Art 34: development of citizens representing minorities or ethnic groups is guaranteed, particularly the right to develop their culture etc
East Europe, North and Central Asia	Slovenia 1991	Art 5: state shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities Art 64: autochthonous Italian and Hungarian national communities have the right to use their national symbols, preserve their national identity, establish organizational and develop economic, cultural, scientific and research activities... Members of these communities shall establish their own self-governing communities in geographic areas where they live

Region	Constitution	Scope of Provision
East Europe, North and Central Asia	Tajikistan 1994	Nil
East Europe, North and Central Asia	The Former Yugoslav Republic of Macedonia 1991	Art 48: protection of the ethnic, cultural, linguistic and religious identity of the nationalities
East Europe, North and Central Asia	Turkmenistan 1992	Nil
East Europe, North and Central Asia	Ukraine 1996	Art 11: the State promotes the consolidation and development of traditions and culture, and the development of ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities Art 92: the rights of indigenous people and national minorities are determined exclusively by the laws of Ukraine Art 140: local self-government is the right of a territorial community, to independently resolve issues of local character within the limits of the Constitution and the laws
East Europe, North and Central Asia	Uzbekistan 1991	Art 4: respectful attitude towards languages, customs and traditions of all nationalities and ethnic groups and create conditions necessary for their development
Meso and South America	Argentina 1853	S 75(17): Congress is empowered to recognise ethnic and cultural pre-existence of indigenous peoples, their legal capacity and community possession and ownership of lands they traditionally occupy and to regulate granting of other lands
Meso and South America	Belize 1981	Nil
Meso and South America	Bolivia 2009	(In Spanish)
Meso and South America	Brazil 1988	Art 20: lands traditionally occupied by Indians are property of the Union Art 231: recognition of social organisation, customs, languages, creeds and traditions of Indians, as well as original rights to lands they traditionally occupy. (1) lands traditionally occupied are those on which they live on a permanent basis, used for productive activities, indispensable to preservation of environmental resources necessary for their well being and physical and cultural reproduction (2) lands traditionally occupied entitle Indians to their riches of the soil, the rivers and the lakes (3) mining etc on Indian land may only be done with authorisation of National Congress (4) lands are inalienable and indisposible (5) removal of Indian groups from their land forbidden (with exceptions) Art 232: Indians have standing to sue to defend their rights and interests <i>Temporary Constitutional Provisions Act</i> : Art 67: the state shall conclude demarcation of Indian lands within 5 years after promulgation of the Constitution
Meso and South America	Chile 1980	Nil
Meso and South America	Colombia 1991	Art 63: communal property of ethnic groups is inalienable, imprescriptible and unseizable Art 171: 2 senators to be elected in special electoral district for indigenous communities Art 246: authorities of indigenous people may exercise functions within territorial jurisdiction in accordance with their own laws and procedures provided they are not contrary to the Constitution and the laws of the Republic Art 310: controls may be placed on rights of movement, density of population, use of land, transfer of immovable property in order to protect cultural identity of indigenous communities Art 329: reservations are collective property and are inalienable Art 330: indigenous territories will be governed by council according to the customs of their communities and will exercise certain functions (listed) Provisional Art 55: recognition of collective property of Black communities in accordance with their traditional cultivation practices
Meso and South America	Costa Rica 1949	Art 129: no disuse, custom, or opposite practice can be claimed against the enforcement of a law

Region	Constitution	Scope of Provision
Meso and South America	Ecuador 2008	(In Spanish)
Meso and South America	El Salvador 1983	(In Spanish)
Meso and South America	Guatemala 1985	Art 67: (using SpanishDict.com) The territories of the cooperatives, indigenous communities or any other forms of communal or collective possession of agrarian property, as well as the patrimony familiar and popular house, will enjoy special protection of the State, credit attendance and of preferential technique, that their possession and development guarantee, in order to assure to all the inhabitants one better quality life. The indigenous communities and other that have earth that historically belong to them and that traditionally they have administered in special form, they will maintain that system.
Meso and South America	Guyana 1980	S 142: (2)(b) - property of Amerindians make be taken or acquired for the purpose of its care, protection or management or any right, title or interest held over lands in an Amerindian District, Area or Village established under the Amerindian Act for the purpose of termination or transfer thereof for the benefit of an Amerindian community
Meso and South America	Honduras 1982	(In Spanish)
Meso and South America	Mexico 1917	Art 27: VII centres of population which possess a communal status shall have legal capacity to enjoy common possession of lands, forests, and waters belonging to them or which have been restored to them; VIII certain acts relating to dealings with communal land declared null and void; X centres of population which lack communal lands shall be granted sufficient lands and waters to constitute them Art 107: II. in trials in <i>amparo</i> which contest acts that resulted from depriving <i>ejidos</i> or population groups from ownership or possession and enjoyment of their lands etc, defects in the complain must be corrected as provided in regulations and there shall be no abandonment, discontinuance due to inactivity, or lapse of legal action, if the rights of <i>ejidos</i> or communal population groups are affected
Meso and South America	Nicaragua 2007	(In Spanish)
Meso and South America	Panama 1972	(In Spanish)
Meso and South America	Paraguay 1992	Art 63: right of Indian peoples to preserve and develop their identity in their respective habitat. Right to apply their systems of political, socioeconomic, cultural, and religious organisation, and to voluntarily observe customary practices in their domestic coexistence as long as they do not violate fundamental rights. Indian customary rights will be taken into account when deciding conflicts of jurisdiction Art 64: (1) Indian peoples have the right to shared ownership of a piece of land, which will be sufficient for them to preserve and develop their own lifestyles. The State will provide them with the respective land free of charge. The land cannot be divided, transferred, or affected by the statute of limitations, or be used as collateral for contractual obligations or be leased. It is exempt from taxes. (2) removal or transfer of Indian groups from their habitat and without their express consent is prohibited Art 65: right of Indian peoples to participate in political, socioeconomic and cultural life of the country in accordance with customary practices, the Constitution, national laws
Meso and South America	Peru 1993	Art 2: (19) right to ethnic and cultural identity Art 89: recognition of rural and native communities. They are autonomous in organisation, communal working, use and free disposal of their land, as well as economically and administratively within the framework established by law. Ownership of their land is imprescriptible except in the case of abandonment. The government respects their cultural identity Art 139: principles and rights of the jurisdictional function: (8) the principle of not failing to administrate justice, despite of legal gap or deficiency. In such case, the general principles of law and customary law must be applied. Art 149: Authorities of the Peasant and Native Communities, with the support of the Peasant Patrols, may exercise jurisdictional functions within their territory in accordance with customary law, provided they do not violate the fundamental rights of the individual.
Meso and South America	Suriname 1987	Nil

Region	Constitution	Scope of Provision
Meso and South America	Uruguay 1967	(In Spanish)
Meso and South America	Venezuela 1999	Art 119: recognises the existence of native peoples, their social, political and economic organisation, cultures, practices and customs, languages and religions, and their habitat and original rights to lands they ancestrally and traditionally occupy. Responsibility of the executive to demarcate and guarantee the right to collective ownership of their lands, which shall be inalienable, not subject to laws of limitations or distraint, and non-transferable Art 120: exploitation of natural resources by the State in native habitats shall be carried out without harming the integrity of such habitats, and is subject to prior information and consultation Art 121: right to maintain and develop ethnical and cultural entity, world view, values, spirituality and holy places and places of cult. Right to education Art 122: right to full health system that takes into consideration their practices and cultures. Recognition of traditional medicine and therapy, subject to principles of bioethics Art 123: right to maintain and promote their own economic practices, traditional productive activities and participation in the national economy Art 124: collective intellectual property rights in knowledge, technology and innovation are guaranteed. Registry of patents is prohibited Art 156: (32) native people and the land they occupy is the competence of the National Public Power Art 181: provisions relating to conversion of vacant land into common land do not apply to land which is part of native communities Art 260: authorities of native peoples shall have the power to apply justice based on their ancestral traditions and affecting their members only, in accordance with their own rules and proceedings, provided they are not contrary to the Constitution, law and public order.
North American and the Caribbean	Antigua and Barbuda 1981	S 127: "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;
North American and the Caribbean	Bahamas 1973	Art 137: law includes any instrument having the force of law and any unwritten rule of law, and "lawful" and "lawfully" shall be construed accordingly;
North American and the Caribbean	Barbados 1966	S 117: "law" includes any instrument having the force of law and any unwritten rule of law;
North American and the Caribbean	Canada 1982	S 22: provisions relating to official languages do not abrogate from legal or customary rights or privileges acquired or enjoyed before or after the Charter enters into force S 25: the rights and freedoms guaranteed in the Charter shall not be construed as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal people including land claims S 35: existing aboriginal and treaty rights of aboriginal peoples recognised and affirmed
North American and the Caribbean	Cuba 1992	Nil
North American and the Caribbean	Dominica 1978	Nil
North American and the Caribbean	Dominican Republic 1994	(In Spanish)
North American and the Caribbean	Grenada 1973	Nil
North American and the Caribbean	Haiti 1987	Nil
North American and the Caribbean	Jamaica 1999	Nil
North American and the Caribbean	Saint Kitts and Nevis 1983	Nil

Region	Constitution	Scope of Provision
North American and the Caribbean	Saint Lucia 1979	Nil
North American and the Caribbean	Saint Vincent and the Grenadines 1979	Nil
North American and the Caribbean	Trinidad and Tobago 1976	Nil
North American and the Caribbean	United States of America 1787	Nil
Oceania	Australia 1900	Nil
Oceania	Cook Islands 1965	Art 48: Land Division of the High Court shall not exercise jurisdiction in relation to land of particular islands that was not, according to local custom, being exercised by the Land Court
Oceania	Federated States of Micronesia 1995	Art V, S 1: nothing in the Constitution takes away a role or function of a traditional leader as recognised by custom and tradition, or prevents them from being recognised, honoured, and given formal or functional roles Art V, S 2: traditions may be protected by statute. If challenged as violation of Art IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such action Art IX, S 2: powers expressly delegated to the Congress include (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 Micronesian customs and traditions etc
Oceania	Fiji 1997 (note: this Constitution was abrogated in 2009 but has not yet been replaced)	S 6: conduct of government based on ownership of land according to custom etc S 38: (7) a law is deemed not to be discriminatory on the grounds that it:... (d) permits the consideration of traditional procedures for settlement of disputes in deciding whether to exercise the discretion to institute or discontinue criminal proceedings; (8) a law may limit rights/freedoms for the purpose of (a) providing for application of customs to land or fishing rights or the entitlement of any person to any chiefly title or rank; or (b) imposing a restriction on alienation of land or fishing rights held in accordance with custom S 43: specification of rights/freedoms does not limit or deny other rights/freedoms recognised by customary law to the extent they are not inconsistent with Ch 4 Constitution S 52: boundaries of recognised traditional areas must be considered in determining the boundaries of constituencies S 185: special procedure for altering Acts relating to indigenous peoples S 186: (1) parliament must make provision for application of customary laws and dispute resolution in accordance with traditional process; (2) must have regard to customs, traditions, usages, values and aspirations of the Fijian and Rotuman people; (3) parliament must make provision granting owners of land or registered customary fishing rights an equitable share of royalties paid the state in respect of the grant of rights to extract minerals
Oceania	Kiribati 1979	Preamble: 4. cherish and uphold customs and traditions S 119: any Banaban interest in land in Banaba cannot be compulsorily acquired other than a leasehold interest and in accordance with s 8(1), and then only where the following conditions are satisfied - Banaba Island Council has been consulted and every reasonable effort has been made to acquire the interest by agreement

Region	Constitution	Scope of Provision
Oceania	Marshall Islands 1979	<p>Art III, S 1: (3) if a person or group become recognised pursuant to customary law or traditional practice as having rights and obligations analogous to Iroijlaplap, the person shall be deemed to be eligible to be a member of the Council of Iroij ... (5) if there is no person eligible to be a member of the Council of Iroij, the Council shall appoint as a member of the Council a person who, having regard to customary law and traditional practice, is qualified by reason of family ties</p> <p>Art III, S 2: the Council of Iroij shall have functions including they may request reconsideration of any Bill affecting customary law, traditional practice or land tenure</p> <p>Art III, S 3: the Council of Iroij may adopt a resolution expressing its opinion that a Bill affects the customary law or traditional practice or land tenure or a related matter and requesting the Nitijela to reconsider the Bill</p> <p>Art VI, S 4: (3) jurisdiction of the Traditional Rights Court shall be limited to determination of questions relating to titles or land rights or other legal interests depending wholly or partly on customary law and traditional practice</p> <p>Art X, S 1: (1) nothing in Article II shall be construed to invalidate customary law or traditional practice concerning land tenure or any related matter; (2) without prejudice to Art XIII S 1, and subject to customary law and traditional practice, rights in land under customary law are not alienable or disposable without the approval of the Iroijlaplap, Iroijedrik, Alap and Senior Dri Jerbal of such land</p> <p>Art X, S 2: in the exercise of legislative functions, it is the responsibility of the Nitijela to declare by Act the customary law. The customary law declared may include any provisions which are necessary or desirable to supplement the established rules of customary law or take account of traditional practice</p> <p>Art XIV, S 1: 'customary law' means any custom having the force of law and includes any Act declaring the customary law; 'land rights' mean any right in land under the customary law or traditional practice</p>
Oceania	Nauru 1968	Nil
Oceania	New Zealand 1986	Nil
Oceania	Niue 1974	<p>Art 33: (1) the Assembly cannot proceed upon any Bill if it makes provision concerning the customary title to Niuean land, the alienation of Niuean land; (5) 'customary title' means title in accordance with customs and usages, and 'Niuean land' means land vested in the Crown but held by Niueans according to customs and usages and includes any customary land declared to be Niuean freehold land or native freehold land before 1 November 1969</p>
Oceania	Palau 1979	<p>Art V, S 1: government shall take no action to prohibit or revoke the role of a traditional leader as recognised by custom and tradition which is not inconsistent with this Constitution</p> <p>Art V, S 2: statutes and traditional law shall be equally authoritative. In the case of conflict, the statute shall prevail to the extent it is not in conflict with underlying principles of traditional law</p> <p>Art VIII, S 6: 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 the Constitution and laws.</p> <p>Art XIII, S 10: the government shall return to the original owners or their heirs any land which became part of the public lands as a result of acquisition by previous occupying powers through force, coercion, fraud, or without just compensation</p>

Region	Constitution	Scope of Provision
Oceania	Papua New Guinea 1975	<p>Preamble: acknowledges worthy customs and traditional wisdoms of the people</p> <p>S 53: (5) nothing in provisions relating to unjust deprivation of property prevents (d) taking of possession or acquisition in accordance with custom, (e) taking of possession or acquisition of ownerless or abandoned property (other than customary law)</p> <p>S 54: nothing in protection of law or unjust deprivation of property provisions invalidates a law that is justifiable that has a proper regard for human rights and provide for (a) the recognition of claimed title of PNG to land where there is a genuine dispute as to whether the land was acquired validly or at all from the customary owners before Independence Day; (b) settlement by extra-judicial means of disputes as to ownership of customary land that do not appear capable of being settled by judicial means</p> <p>S 78: adoption provisions apply to adoptions by custom</p> <p>S 172: (2) may establish courts intended to deal with matters primarily by reference to custom or in accordance with customary procedures, or both</p> <p>Sch 1.2: "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) custom is adopted and shall be applied and enforced as part of the underlying law; (2) custom that is inconsistent with the Constitution or a statute or repugnant to general principles of humanity is not adopted; (3) Act of Parliament may provide for proof and pleading, regulated the manner in which custom may be recognised, applied or enforced, and provide for the resolution of conflicts of custom</p> <p>Sch 2.2: (1) principle of rules and common law and equity in England are adopted except if and to the extent that they are inconsistent with custom as adopted in Sch 2.1</p> <p>Sch 2.10: where it appears that a decision that is otherwise binding on a court and otherwise applicable is inconsistent with custom that is part of the underlying law and is applicable, the court may take whatever action is appropriate</p>
Oceania	Samoa 1960	<p>Preamble: based on Christian principles and Samoan custom and tradition</p> <p>Art 20: nothing shall prevent Head of State from holding the pule over any customary land or from disposing of the produce of any customary or freehold land</p> <p>Art 100: Matai title shall be held in accordance with Samoan custom and usage and law relating to custom and usage</p> <p>Art 101: (1) all land is customary land, freehold land or public land; (2) customary land means land held in accordance with custom and usage and with law relating to custom and usage</p> <p>Art 102: not lawful to make any alienation or disposition of customary land or any interest in customary land, nor shall customary land or any interest therein be capable of being taken in execution or be assets for the payment of debts. Act may authorise grant of lease or taking of customary land for public purposes</p> <p>Art 103: Land and Titles Court established, with such jurisdiction in relation to Matai titles and customary land as may be provided by Act</p> <p>Art 111: 'law' includes any custom or usage which has acquired the force of law in Western Samoa</p>

Region	Constitution	Scope of Provision
Oceania	Solomon Islands 1978	<p>Preamble: proud of the wisdom and worthy customs of ancestors</p> <p>S 15: (5) anti-discrimination provisions shall not apply to any law so far as it makes provision (d) for the application of customary law</p> <p>S 75: parliament shall make provisions for the application of laws, including customary laws, having regard to customs, values and aspirations of the people</p> <p>S 76: until Parliament makes other provisions under s 75, Sch 3 shall have effect for determining the operation 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>
Oceania	Tonga 1875	Nil
Oceania	Tuvalu 1986	<p>Preamble: independent State based on Tuvaluan custom and tradition</p> <p>S 15: (5) in determining whether a law or act is reasonably justifiable in a democratic society, a court may have regard to - (a) traditional standards, values and practices</p> <p>S 27: (3) anti-discrimination provisions do not apply in so far as a law makes provision - (d) in respect of adoption, marriage, divorce, burial, or any other such matter in accordance with personal law, beliefs or customs of any person or group ... (7) no act that is in accordance with Tuvaluan custom and is reasonable shall be considered discriminatory</p> <p>S 83: (2) boundaries of traditional areas must be taken into account in determining electoral boundaries</p>
Oceania	Vanuatu 1980	<p>Art 5: (2)(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: establishes National Council of Chiefs composed of custom chiefs</p> <p>Art 30: National Council of Chiefs has competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of culture and language, and the Council may be consulted on any question relating to a Bill before the Parliament</p> <p>Art 31: law shall provide for the organisation of the Council and in particular for the role of chiefs at the village, island and district level</p> <p>Art 47: if there is no rule of law applicable to a case, a court shall determine it whenever possible in conformity with custom</p> <p>Art 51: parliament may provide for the manner of ascertaining relevant rules of custom and for persons knowledgeable in custom to sit with the judges of the Supreme Court or Court of Appeal</p> <p>Art 52: establishment of village or island courts with jurisdiction over customary and other matters, and provide for the role of chiefs in such courts</p> <p>Art 73: all land belongs to the indigenous custom owners and their descendants</p> <p>Art 74: rules of custom shall form the basis of ownership and use of land</p> <p>Art 78: (2) Government shall arrange for the appropriate customary institutions or procedures to resolve disputes concerning the ownership of custom land</p> <p>Art 79: consent required for land transactions between an indigenous and non-indigenous person or non-citizen shall be granted unless it the transaction is prejudicial to the interests of the custom owner</p> <p>Art 81: Government may buy land from custom owners for the purpose of transferring ownership to an indigenous citizen from an over-populated island</p> <p>Art 95: (2) British and French laws shall continue to apply wherever possible taking due account of custom;(3) customary law shall continue to have effect as part of the law</p>

Region	Constitution	Scope of Provision
South and East Asia	Bangladesh 1972	Art. 23: conserve the cultural traditions and heritage of the people 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;
South and East Asia	Bhutan 2008	Nil
South and East Asia	Brunei Darussalam 1984	Nil
South and East Asia	Cambodia 1993	Nil
South and East Asia	China 1982	Art 4: (2) regional autonomy is practised in all areas where people of minority nationalities live in compact communities; (3) all nationalities have freedom to use and develop spoken and written languages, and to preserve or reform their own ways and customs
South and East Asia	Democratic People's Republic of Korea 2005	Nil
South and East Asia	India 1949	Art 13: (3)(a) for the purpose of that article (on laws inconsistent with fundamental rights) law includes custom or usage having in the territory of India the force of law Art 29: (1) right to conserve distinct language, script or culture Art 371A: no Act of Parliament in respect of Naga customary law or procedure, civil and criminal justice involving decisions according to Naga customary law etc shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by resolution so decides Art 371G: as per 371A, but for State of Mizoram
South and East Asia	Indonesia 1945	Art 18B: recognition of traditional communities and their traditional customary rights as long as they remain in existence and are in accordance with societal development and the principles of Indonesia, and shall be regulated by law Art 28l: cultural identities and rights of traditional communities respected
South and East Asia	Japan 1947	Nil
South and East Asia	Lao People's Democratic Republic 1991	Art 8: right to protect, preserve, and promote the fine customs and cultures of their own tribes

Region	Constitution	Scope of Provision
South and East Asia	Malaysia 1957	<p>Art 8: (5) anti-discrimination clauses do not invalidate or prohibit any provision for the protection, wellbeing or advancement of the aboriginal people of the Malay Peninsula</p> <p>Art 76: (2) no law shall be made under the power to implement treaties or agreements relating to a matter enumerated in the State List with respect to any matter of Islamic law or the custom of the Malays or to any matters of native law or custom in Sabah or Sarawak</p> <p>Art 89: Malay reserves</p> <p>Art 90: (1) nothing in Constitution affects the validity of restrictions imposed by law on transfer or lease of customary land in Negeri Sembilan or Malacca</p> <p>Art 150: (6A) Proclamation of Emergency shall not extend the powers of Parliament with respect to matters of Islamic law or the customs of the Malays, or any matter of native law or custom in Sabah or Sarawak</p> <p>Art 153: responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of Sabah and Sarawak and the legitimate interests of other communities</p> <p>Art 160: 'law' includes any custom or usage having the force of law</p> <p>Art 161A: (6) definition of 'native'</p> <p>Sch 8, art 1: (2) ruler may act in discretion in the performance of the following functions... (d) any function relating to the customs of the Malays... (f) the appointment of persons to Malay customary ranks, titles, honours and dignities</p> <p>Sch 8 art 19: (2) provisions affecting succession to the throne and position of the Ruling Chief and similar Malay customary dignities may not be amended by State legislature</p> <p>Sch 9, List 1 (Federal List): (6) machinery of government including ... (e) native law and custom to the same extent as provided in item 13 of the Supplement to State List for Sabah and Sarawak; (16) welfare of aborigines</p> <p>Sch 9, List 2 (State List): (1) Malay customs, determination of matters of doctrine Malay custom (2)(b) Malay reservations or, in Sabah and Sarawak, native reservations</p> <p>Sch 9, List 2A (Supplement to State List for Sabah and Sarawak): 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;</p>
South and East Asia	Maldives 2006	Nil
South and East Asia	Mongolia 1992	Art 8: right of minorities of other tongues to use their native languages
South and East Asia	Myanmar 2008	<p>S 354: (d) right to develop language, literature, culture, religion, and customs without prejudice</p> <p>S 365: as above</p>
South and East Asia	Nepal 2007 (note: interim constitution only)	<p>Art 17: right to preserve and promote language, script, culture, cultural civilisation and heritage</p> <p>Art 35: (18) policy of modernising traditional knowledge, skills and practices existing by identifying and protecting them</p>
South and East Asia	Philippines 1987	<p>Art II, S 22: the State shall recognise and promote the rights of indigenous cultural communities</p> <p>Art XII, S 5: The State shall, subject to the Constitution and development policies, protect the rights of indigenous cultural communities to their ancestral lands to ensure their well-being; Congress may provide for applicability of customary laws governing property rights in determining ownership and extent of ancestral lands</p> <p>Art XIII, S 6: the State shall apply principles of stewardship in the disposition or utilisation of natural resources including lands of public domain under lease, subject to the rights of indigenous communities to their ancestral lands</p> <p>Art XIV, S 17: the State shall recognise, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions and consider these rights in formulation of plans and policies</p> <p>Art XVI S 12: may create consultative body to advise on policies affecting indigenous cultural communities with a majority of members from those communities</p>
South and East Asia	Republic of Korea 1948	Nil

Region	Constitution	Scope of Provision
South and East Asia	Singapore 1963	Art 2: "law" includes any custom or usage having the force of law in Singapore; Art 152: (1) Government responsibility to care for the interest of minorities; (2) Government shall exercise functions in a manner as to recognise special position of the Malays and has the responsibility to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language
South and East Asia	Sri Lanka 1978	Art 14: freedom to enjoy and promote culture and language
South and East Asia	Thailand 2007	S 66: communities, local communities, or traditional communities shall have rights to conserve or restore their customs, local knowledge, arts or good culture and participate in the management, maintenance, preservation and exploitation of natural resources, environment, and biological diversity in a balanced fashion and persistently S 289: local government organisations have the duty to conserve customs, knowledge and good culture
South and East Asia	Timor-Leste 2002	S 2: (4) The State recognizes and values the norms and customs of East Timor that are not contrary to the Constitution and legislation that deals especially with customary law. S 59: right to cultural enjoyment and duty to preserve, protect and value cultural heritage
South and East Asia	Viet Nam 1992	Art 5: right to use language and system of writing, preserve national identity, and promote fine customs, habits, traditions and culture
West Asia	Afghanistan 2004	Art 84: members of the House of Elders shall include two members from nomads
West Asia	Bahrain 1973	Nil
West Asia	Iraq 2004 (note: interim constitution only)	Nil
West Asia	Islamic Republic of Iran 1979	Nil
West Asia	Jordan 1952	Nil
West Asia	Kuwait 1962	Nil
West Asia	Lebanon 1926	Nil
West Asia	Oman 1996	Nil
West Asia	Pakistan 1999	Preamble: provision shall be made for the minorities freely to profess and practise their religions and develop their cultures Art 8: (1) any custom having the force of law inconsistent with rights conferred by the Constitution is void to the extent of the inconsistency Art 28: any citizens having a distinct language, script or culture shall have the right to preserve and promote the same and establish institutions for that purpose Art 36: safeguarding the legitimate rights and interests of minorities Art 203B: 'law' for the purpose of Ch 2 includes any custom or usage having the force of law Art 246: 'Tribal Areas' means areas which immediately before the commencing day, were Tribal Areas, and includes - ... Art 247: (3) no Act shall apply to a Federally Administered Tribal Area unless the President directs and no Act shall apply to a Provincially Administered Tribal Area unless the Governor of the Province, with the approval of the President, so directs; (7) neither the Supreme Court nor a High Court shall exercise jurisdiction under the Constitution unless the Parliament by law otherwise provides
West Asia	Qatar 2003	Art 57: duty of all who reside in Qatar or enter its territory to observe national traditions and established customs
West Asia	Saudi Arabia 1992	Nil
West Asia	Syrian Arab Republic 1973	Art 26: right to participate in cultural life
West Asia	United Arab Emirates 1971	Nil
West Asia	Yemen 1994	Nil

Region	Constitution	Scope of Provision
West Europe	Andorra 1993	Art. 34: guarantees conservation of historical and cultural heritage Art. 79: the Comuns function under the principle of self-government, within the area of their jurisdiction subject to the Constitution, the laws and tradition. Art. 80: Comuns delimit communal territory, and may impose taxes including traditional tributes Art. 84: laws take into account custom and usage in determining the jurisdiction of Quarts and Veinats, as well as their relationship with the Comuns
West Europe	Austria 1920	Nil
West Europe	Belgium 1994	Nil
West Europe	Cyprus 1960	Nil
West Europe	Denmark 1953	Nil
West Europe	Finland 1999	S 17: 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 S 121: in their native region, the Sami have linguistic and cultural self-government, as provided by an Act
West Europe	France 1958	Art 77: the Deliberative Assembly of New Caledonia shall determine the rules concerning citizenship, the electoral system, employment, and personal status as laid down by customary law
West Europe	Germany 1949	Nil
West Europe	Greece 2001	Nil
West Europe	Iceland 1944	Nil
West Europe	Ireland 1937	Nil
West Europe	Italy 1948	Nil
West Europe	Liechtenstein 1921	Nil
West Europe	Luxembourg 1868	Nil
West Europe	Malta 1964	Nil
West Europe	Monaco 1962	(In French)
West Europe	Netherlands 2002	Nil
West Europe	Norway 1814	Art 110a: responsibility of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life
West Europe	Portugal 1976	Nil
West Europe	Spain 1978	S 125: citizens may engage in popular action and take part of the administration of justice through the jury in customary and traditional courts S 143: provisions for establishing self-governing communities (bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with historic regional status may accede to self-government) S 149: the State shall have exclusive competence over (viii) civil legislation, without prejudice to the preservation, modification and development by the self-governing communities of their traditional charts Additional Provision 1: protection and respect for the historic rights of territories with traditional charts (fueros). The updating of historic rights shall be carried out within the framework of the Constitution and the Statutes of Autonomy Additional Provision 2: provisions on coming of age shall not be prejudicial to cases in which traditional charts are applicable within the sphere of private law
West Europe	Sweden 1974	Art 2: opportunities for ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own
West Europe	Switzerland 1998	Nil
West Europe	Turkey 1982	Art 170: secure cooperation between the state and 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

Annex B – Bibliography of statutory provisions

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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.	http://faolex.fao.org/docs/texts/aus19125.doc
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.	http://faolex.fao.org/docs/texts/aus6405.doc
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.	http://faolex.fao.org/docs/texts/aus15378.doc
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	http://faolex.fao.org/docs/pdf/qs40851.pdf
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.	http://faolex.fao.org/docs/texts/nsw17319.doc
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	http://faolex.fao.org/docs/texts/nt15764.doc

Jurisdiction	Legislation	Scope of provision	Access
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	http://faolex.fao.org/docs/pdf/qs40459.pdf
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	http://faolex.fao.org/docs/pdf/qs41161.pdf
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	http://faolex.fao.org/docs/pdf/qs40760.pdf
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.	http://faolex.fao.org/docs/pdf/qs40850.pdf
Austria - Kärnten (in German)	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).	http://faolex.fao.org/docs/pdf/aut61483.pdf
Austria - Niederösterreich (in German)	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).	http://faolex.fao.org/docs/texts/aut72952.doc
Austria - Oberösterreich (in German)	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	http://faolex.fao.org/docs/texts/aut81699.doc

Jurisdiction	Legislation	Scope of provision	Access
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	http://faolex.fao.org/docs/pdf/bgd35593.pdf
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	http://faolex.fao.org/docs/pdf/bar80911.pdf
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	http://www.moa.gov.bt/moa/downloads/downloadFiles/MoADownload4wa6517jw.pdf
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	http://faolex.fao.org/docs/pdf/bot91334.pdf
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	http://faolex.fao.org/docs/pdf/bot65987.pdf
Botswana	Customary Law Act 1969 (Chapter 16:01)	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 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 S 7: notwithstanding s 4, customary law applies to inheritance regarding an intestate tribesmen 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 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 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 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	http://faolex.fao.org/docs/pdf/bot91329.pdf

Jurisdiction	Legislation	Scope of provision	Access
Botswana	Tribal Land Act 1968 (Ch 32:02)	S 3: establishment of land boards 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 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 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 S 17: land board shall determine and define land use zones within the tribal area S 19: may establish subordinate land boards and confer any functions of the land board on them 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	http://faolex.fao.org/docs/pdf/bot39051.pdf
Botswana	Tribal Land Act 1968 (Ch 32:02) - Establishment of Subordinate Lands Board Order 1973 (Ch 32:02)	S 2: establishes the Subordinate Land Boards as per the schedule 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.	http://faolex.fao.org/docs/pdf/bot26413.pdf
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.	http://faolex.fao.org/docs/pdf/bot26411.pdf
Brazil (in Portuguese)	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.	http://faolex.fao.org/docs/pdf/bra74668.pdf
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)	http://faolex.fao.org/docs/pdf/bru89607.pdf

Jurisdiction	Legislation	Scope of provision	Access
Bulgaria (in Bulgarian)	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.	http://faolex.fao.org/docs/texts/bul88896.doc
Cambodia	Land Law 2001	<p>Art 23: definition of indigenous community</p> <p>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.</p> <p>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</p> <p>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</p> <p>Art 28: no authority outside the community may acquire rights to immovable property belonging to an indigenous community</p>	http://faolex.fao.org/docs/texts/cam27478.doc

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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: commissionaries 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>	http://faolex.fao.org/docs/pdf/cam50411.pdf
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>	http://faolex.fao.org/docs/pdf/eth80475.pdf

Jurisdiction	Legislation	Scope of provision	Access
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	http://faolex.fao.org/docs/pdf/gam41087.pdf
Ghana	Chieftancy Act 2008 (Act No. 759)	S 1: establishes National House of Chiefs 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 S 6: establishes Regional Houses of Chiefs 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 S 12: establishes Traditional Council in each traditional area S 17: establishes in each traditional area the Divisional Councils that the Regional House may determine Ss 22-30: jurisdiction of the National House of Chiefs, Regional Houses of Chiefs, and Traditional Councils 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 S 45: a transaction purporting to alienate or pledge stool property is voidable unless made with the consent of the Traditional Council 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 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 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) 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) 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) 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 Ss 57-63: provisions on chiefs	http://faolex.fao.org/docs/pdf/gha83760.pdf
Ghana	Conveyancing Decree 1973 (NRCDC 175)	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 S 4: an oral grant of land under customary law shall be recorded (with further details on requirements of record) 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	http://faolex.fao.org/docs/pdf/gha86269.pdf
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	http://faolex.fao.org/docs/pdf/gha3109.pdf

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>	http://www.epa.gov.gh/gahanalex/acts/Acts/LAND%20TITLE%20REGISTRATION%20ACT,1986.pdf
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>	http://www.dephut.go.id/INFORMASI/UNDANG2/uu/Law_4199.htm
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>	http://www.eastimorlawjournal.org/LEGALRESEARCH/UUPA_English.DOC
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>	http://faolex.fao.org/docs/texts/ins48775.doc

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>http://faolex.fao.org/docs/pdf/ins36559.pdf</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>http://faolex.fao.org/docs/texts/ken62433.doc</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>	http://faolex.fao.org/docs/texts/ken62975.doc
Laos	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>	http://faolex.fao.org/docs/pdf/lao6293.pdf
Laos	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>	http://faolex.fao.org/docs/pdf/lao89474.pdf
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>	http://faolex.fao.org/docs/texts/les18328.doc
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	http://faolex.fao.org/docs/pdf/mlw13233.pdf

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	http://faolex.fao.org/docs/pdf/mlw10025.pdf
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	http://www.agc.gov.my/agc/Akta/Vol.%2010/Act%20486.pdf
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	http://www.internationalwildlifelaw.org/Malaysia.html
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	http://faolex.fao.org/docs/pdf/mas64862.pdf
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	http://faolex.fao.org/docs/html/mas49744.htm
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	http://faolex.fao.org/docs/texts/mic79810.doc
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	http://faolex.fao.org/docs/texts/mic78970.doc

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	http://www.fsmlaw.org/ya p/constitution/index.htm
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	http://faolex.fao.org/docs /texts/moz65620.doc
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	http://www.doingbusiness.org/Documents/LawLib rary/Mozambique-Land-Law-Legislation.pdf
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	http://www.lac.org.na/laws/pdf/communallandreformact.pdf
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	http://www.nid.org.na/pub_docs/traditional_autho .pdf
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	http://faolex.fao.org/docs /pdf/nam46518.pdf
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 law	http://faolex.fao.org/docs /pdf/nam66435.pdf
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	http://faolex.fao.org/docs /texts/nau74457.doc

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)	http://faolex.fao.org/docs/texts/nze11968.doc
New Zealand	Fisheries Act 1996 (No. 88 of 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	http://faolex.fao.org/docs/texts/nze11669.doc AND http://faolex.fao.org/docs/texts/nze11669-SCH.doc
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	http://faolex.fao.org/docs/texts/nze3311.doc

Jurisdiction	Legislation	Scope of provision	Access
New Zealand	Maori Reserved Land Act (No. 38 of 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>	http://faolex.fao.org/docs/texts/nze12592.doc
New Zealand	Te Ture Whenua Maori (Maori Land) Act 1993	<p>Part 1: continuation of the Maori Land Court</p> <p>Part 2: continuation of the Maori Appellate Court</p> <p>Part 4: administration of estates</p> <p>Part 5: recording of ownership</p> <p>Part 6: status of land</p> <p>Part 7: alienation of Maori land</p> <p>Part 8: duties and powers of court in relation to alienations of Maori freehold land</p> <p>Part 9: powers of assembled owners</p> <p>Part 10: representation of owners of Maori lands</p> <p>Part 11: leases</p> <p>Part 12: trusts</p> <p>Part 13: Maori incorporations</p> <p>Part 14: title reconstruction and improvement</p> <p>Part 17: Maori reservations</p>	http://www.legislation.govt.nz/act/public/1993/0004/latest/whole.html?search=ts_act_climate+change_resel#d1m289897

Jurisdiction	Legislation	Scope of provision	Access
New Zealand	Treaty of Waitangi (Fisheries Claims) Settlement Act (No. 121 of 1992)	<p>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</p> <p>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</p>	http://faolex.fao.org/docs/pdf/nze5601.pdf
New Zealand - Cook Islands	Cook Islands Act 1915 (No. 40 of 1915)	<p>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</p> <p>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</p> <p>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</p> <p>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</p> <p>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</p> <p>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)</p> <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</p>	http://faolex.fao.org/docs/texts/cok65474.doc

Jurisdiction	Legislation	Scope of provision	Access
		<p>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	http://www.ub.uio.no/ujur/ulovdata/lov-20050527-031-eng.pdf
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>	http://faolex.fao.org/docs/texts/png70607.doc
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>	http://www.paclii.org/pg/legis/consol_act/fa1991139/

Jurisdiction	Legislation	Scope of provision	Access
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>	http://faolex.fao.org/docs/pdf/png20843.pdf

Jurisdiction	Legislation	Scope of provision	Access
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>	http://faolex.fao.org/docs/texts/png20852.doc
Philippines	Indigenous Peoples Rights Act 1997	<p>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</p> <p>Ch 3 - rights to ancestral domains</p>	http://www.grain.org/brl_files/philippines-ipra-1999-en.pdf
Philippines	National Integrated Protected Areas System Act 1992 (Republic Act No. 7586 of 1992)	<p>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</p> <p>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</p> <p>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</p>	http://faolex.fao.org/docs/html/phi19796.htm
Philippines	Wildlife Resources Conservation and Protection Act 2001	<p>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;</p> <p>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</p> <p>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;</p>	http://www.chanrobles.com/republicactno9147.html
Portugal	Decree-Law No. 118/2002 on the registration, conservation, legal	<p>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)</p>	http://faolex.fao.org/docs/texts/por50973E.doc

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	safeguarding and transfer of autochthonous plant material to agrarian, agroforest and landscape activity	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	
Russian Federation (in Russian)	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	<p>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.</p> <p>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.</p>	http://faolex.fao.org/docs/texts/rus44768.doc
Russian Federation (in Russian)	Federal Law No. 166-FZ on fisheries and conservation of aquatic biological resources 2004	<p>Ch 1: general provisions Ch 2: establishes the right to aquatic biological diversity Ch 3: classification of the types of fisheries Ch 4: fishing authorization, establishes the modalities of distribution of quotas through tenders and determines the modalities of the right of use of a fishing area in accordance with contract Ch 5: state monitoring of aquatic biological diversity and state control of fisheries and protection of aquatic biological diversity Ch 6: conservation of aquatic biological diversity and habitats Ch 7: dispute settlement and establishes liability for the infringement of the legislation on fisheries and conservation of aquatic biological diversity. Natural and legal persons are authorized to carry out the following types of fisheries... 6) traditional fisheries. Total allowable catch shall be set annually by the Federal Fisheries Institution and following quotas shall be distributed annually thereby: ... 7) quotas for traditional fisheries. Contracts for the use of fishing areas shall be allocated through tenders except for natural persons pertaining to the indigenous scanty population or the communities thereof for which is envisaged direct allocation</p>	http://faolex.fao.org/docs/texts/rus51893.doc

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Russian Federation (in Russian)	Federal Law No. 82-FZ on ensuring traditional rights of sparsely distributed indigenous peoples of the Russian Federation 1999	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.	http://faolex.fao.org/docs/texts/rus79128.doc
Russian Federation (in Russian)	Federal Law No. 82-FZ regarding guarantees to indigenous scanty population of the Russian Federation 1999	This Law establishes legal grounds for guarantees of the distinctive social, economic and cultural development of indigenous scanty population, protection of its primordial habitat, and traditional way of life, economic activity and traditional community management. Regional executive bodies are authorized: 1) to adopt regional programs of management and protection of land of traditional rights and other natural resources; 2) to establish the modalities of transfer of land of traditional rights and set quotas for traditional fisheries and hunting of the indigenous scanty population and carry out control over their fulfilment. Individuals pertaining to the communities of the indigenous scanty population, for the purpose of protection of their traditional way of life, shall have the right of ownership and management in the areas of their traditional settlement of all categories of land necessary for carrying out traditional community management, hunting and fisheries, and also minerals in conformity with the modalities established by Federal and Regional legislation.	http://faolex.fao.org/docs/texts/rus44767.doc
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	http://www.paclii.org/ws/legis/consol_act/aocla1965283/
Samoa	Land and Titles Act 1981	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; 'pulefaamaui' 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 S 8: land deemed to be customary land (court ordered, conveyed by Government etc) 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) 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. S 14: any Samoan who claims a pulēfaamaui 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 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). S 22: register of matais to be kept (ss 22 and 23 have further provisions on procedure for appointing a matai etc) 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 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 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	http://www.ecolex.org/ecolex/ledge/view/RecordDetails;document_Land%20and%20Titles%20Act%201981..html?DIDPFDStjsessionid=CA1783017655627004CE21692F95BE9F?id=LEX-FAOC035648&index=documents
Samoa	Water Resources Management Act 2008	S 6: (4) nothing in this Act affects any rights of customary ownership of land in Samoa S 25: (b) consultation with customary bodies in preparation of a watershed management plan	http://www.paclii.org/ws/legis/consol_act/aocla19

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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, silvicultural and afforestation activities, and all fees received, and give copies to the Forestry Division and Chiefdom Council</p>	http://faolex.fao.org/docs/pdf/sie5732.pdf
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>	http://faolex.fao.org/docs/texts/sol74602.doc

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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>	http://faolex.fao.org/docs/texts/sol65423.doc
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 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</p>	http://faolex.fao.org/docs/texts/sol50852.doc

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		<p>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>	
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 such land</p>	http://www.mangaung.co.za/docs/Communal%20Land%20Rights%20Act.pdf
South Africa	Interim Protection of Informal Land Rights Act 1996 (No. 1057 of 1996)	<p>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</p> <p>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</p> <p>S 3: subject to s 2, any sale or disposition of land shall be subject to existing informal rights to that land</p>	http://faolex.fao.org/docs/html/saf16337.htm
Tanzania	Fisheries Act 2003	<p>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;</p> <p>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</p> <p>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</p>	http://www.bunge.go.tz/Polis/PAMS/Docs/22-2003.pdf

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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.	http://faolex.fao.org/docs/pdf/tan34429.pdf
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	http://faolex.fao.org/docs/pdf/tan8229.pdf
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	http://faolex.fao.org/docs/pdf/tan8991.pdf
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	http://faolex.fao.org/docs/pdf/tan78231.pdf
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	http://nfp.co.tz/documents/Village%20Land%20Act%20No.5%20of%201999.pdf
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	http://www.maji.go.tz/modules/documents/index.php?action=downloadfile&filename=THE%20WATER%20RESOURCES%20MANAGEMENT%20ACT.pdf&directory=Water%20Legislation&

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Tanzania - Rukwa	Nkansi District Council (Cultivation of Agricultural Land) By-laws (G.N. No. 111 of 1994)	<p>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</p> <p>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</p> <p>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</p> <p>S 6: no resident shall fell crops for any purpose other than agricultural improvement or enhancement of the environment</p>	http://faolex.fao.org/docs/pdf/tan5296.pdf
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.	http://faolex.fao.org/docs/texts/tuv74780.doc
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>	http://faolex.fao.org/docs/texts/tuv35693.doc

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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>	http://faolex.fao.org/docs/pdf/uga19682.pdf

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United Kingdom - Cayman Islands	Endangered Species Protection and Propagation Law, 1978 (No. 21 of 1978)	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.	http://faolex.fao.org/docs/pdf/cay9865.pdf
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	http://faolex.fao.org/docs/html/Usa11174.htm
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	http://epw.senate.gov/esa73.pdf
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	http://faolex.fao.org/docs/html/Usa5585.htm
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	http://faolex.fao.org/docs/html/Usa5593.htm
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.	http://faolex.fao.org/docs/html/Usa5785.htm
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	http://faolex.fao.org/docs/pdf/gum54216.pdf
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's 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	http://hawaii.gov/lrb/con/

Jurisdiction	Legislation	Scope of provision	Access
Vietnam	Order No. 23/2003/L-CTN on the promulgation of Land Law No. 13/2003/QH11	<p>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</p> <p>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</p> <p>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</p> <p>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</p> <p>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)</p> <p>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</p> <p>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</p>	http://faolex.fao.org/docs/pdf/vie43122.pdf
Zambia	Forests Act 1999 (Act No. 7 of 1999)	<p>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</p> <p>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</p> <p>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</p> <p>S 39: prohibition on manufacturing wood into charcoal in or from any customary area without a licence (except for personal use etc)</p> <p>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)</p> <p>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</p>	http://faolex.fao.org/docs/texts/zam21483.doc

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>	http://faolex.fao.org/docs/pdf/zam9900.pdf
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>	http://faolex.fao.org/docs/pdf/zim93536.pdf
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>	http://faolex.fao.org/docs/pdf/zim93537.pdf

Annex C – Bibliography of literature

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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 JSTOR
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.	http://www.ajicl.org/AJICL2004/vol211/Ahren.pdf
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.	http://www.fao.org/docrep/x8080e/x8080e04.htm#PO_0
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.	http://pdf.wri.org/ref/alden_wily_04_can_own_forest_critical.pdf
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.	http://www.fao.org/docrep/w8827e/w8827e03.htm#accommodating%20conflicting%20interests%20in%20forestry%20concepts%20emerging%20from%20pluralism
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.	http://www.fig.net/pub/accra/papers/ts05/ts05_01_antwi.pdf
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 InformaWorld

Citation	Description	Access
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).	http://www.cmi.no/sudan/doc/?id=966
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.	http://www.jlp.bham.ac.uk/volumes/37-38/banksouthall-art.pdf
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.	http://www.jlp.bham.ac.uk/volumes/40/bavinck-art.pdf
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 ScienceDirect
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	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	Note: preview only http://books.google.com/books?id=CueiTFXCRXQC&printsec=frontcover&source=gbs_atb#v=onepage&q&f=false
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	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.	http://www.jlp.bham.ac.uk/volumes/43/besson-art.pdf
Bilal, A., Haque, H. and Moore, P. (2003). <i>Customary Laws: Governing Natural Resource Management in the Northern Areas</i> . Karachi, Pakistan: IUCN (ELP)	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.	http://data.iucn.org/dbtw-wpd/edocs/2003-105.pdf
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	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.	Available through Wiley InterScience

Citation	Description	Access
Burchi, S. (2005). <i>The Interface Between Customary and Statutory Water Rights - A statutory perspective</i> . FAO Legal Papers Online #45	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.	http://www.fao.org/legal/prsol/lpo45.pdf
Canadian Council of International Law (1996). <i>Global Forests and International Environmental Law</i> . International Environmental Law and Policy Series. London: Kluwer Law International	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	Note: abstract and link to purchase full text only http://www.cababstractsplus.org/abstracts/Abstract.aspx?AcNo=19960608753
Care, J. C. and Zorn, J. G. (2001). 'Statutory Developments in Melanesian Customary Law'. <i>Journal of Legal Pluralism</i> 46: 50	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.	http://www.jlp.bham.ac.uk/volumes/46/corrinczorn-art.pdf
Castilleja, G. (1993). 'Changing trends in forest policy in Latin America: Chile, Nicaragua and Mexico'. <i>Unasylva</i> 175:	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.	http://www.fao.org/docrep/v1500e/v1500e07.htm#changing%20trends%20in%20forest%20policy%20in%20latin%20america:%20chile,%20nicaragua%20and%20mexico
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 http://www.recoftc.org/site/fileadmin/docs/Events/RR1_Conference/Session_3/Poster_Notes/B_Chakma_3.1.doc	Examines forest governance in the Chittagong Hill Tracts of Bangladesh	http://www.recoftc.org/site/fileadmin/docs/Events/RR1_Conference/Session_3/Poster_Notes/B_Chakma_3.1.doc
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 http://search.informit.com.au/documentSummary;dn=377274123059064;res=IELHSS
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.	http://www.iied.org/pubs/pdfs/9297IIED.pdf
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	http://books.google.com/books?id=KDCr11Nj9n0C&pg=PA37&dq=customary+law+forest&hl=en&ei=Mr4pTImMHM2xrAe07J11&sa=X&oi=book_result&ct=result&resnum=2&ved=0CC0Q6AEwAQ#v=onepage&q=customary%20law%20forest&f=false

Citation	Description	Access
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	http://lawlibrary.unm.edu/nrj/30/3/04_clark_tensions.pdf
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	http://www.commission-on-legal-pluralism.ch/List_of_organisational_session.pdf
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.	http://indigenouseoplesissues.com/attachments/4686_Indigenization_IPL.pdf
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	http://www.cbnrm.net/pdf/corbett_001.pdf
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.	http://www.iied.org/pubs/pdfs/12537IIED.pdf
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	http://www.jlp.bham.ac.uk/volumes/52/cotulacisse-art.pdf

Citation	Description	Access
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.	http://www.jlp.bham.ac.uk/volumes/37-38/daneel-art.pdf
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 HeinOnline
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.	http://www.iied.org/pubs/pdfs/7405IIED.pdf
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 http://www.ebooks.com/ebooks/book_display.asp?IID=253452&isAcademic=y
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.	http://www.iied.org/pubs/pdfs/7525IIED.pdf
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.	http://www.iied.org/pubs/pdfs/7521IIED.pdf
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	http://www.fao.org/legal/prs-ol/lpo30.pdf

Citation	Description	Access
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.	http://www.fao.org/legal/prs-ol/lpo73.pdf
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>	https://www.tai.org.au/file.php?file=DP80.pdf
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.	http://www.fao.org/docrep/v1500e/v1500e05.htm#resolving%20conflicts%20between%20custom%20and%20official%20forestry%20law%20in%20the%20southwestern
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.	http://www.fao.org/legal/prs-ol/lpo1.pdf
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 http://www.informaworld.com/smpp/content~db=all~content=at725273294

Citation	Description	Access
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 http://books.google.com.au/books?id=eBOiJaJ8yAoC&printsec=frontcover&dq=people+and+forests&source=bl&ots=5JrjVqKqpT&sig=9H4f78RC4GsY4AuvgnDu6H7m6jU&hl=en&ei=Suk2TlbgENGfrAez14GwAg&sa=X&oi=book_result&ct=result&resnum=6&ved=0CCwQ6AEwBQ#v=onepage&q&f=false
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 http://www.ebooks.com/ebooks/book_display.asp?IID=243153&isAcademic=y
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.	http://eprints.jcu.edu.au/4537/1/4537_Havemann_2005.pdf
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	http://www.jstor.org/stable/744901
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
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.	http://www.jlp.bham.ac.uk/volumes/44/hinz-art.pdf

Citation	Description	Access
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: http://www.kas.de/upload/auslandshomepages/namibia/Namibia_Law_Journal/09-1/falk.pdf
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	ftp://ftp.fao.org/docrep/fao/007/y5692e/y5692e00.pdf
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.	http://pdf.usaid.gov/pdf_docs/PNACL385.pdf
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.	http://www.fao.org/legal/advserv/FAOIUCNcs/Guyana.pdf
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.	http://findarticles.com/p/articles/mi_qa3800/is_200904/ai_n31514025/
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
Kho, J. and Agsaoy-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.	http://www.fao.org/legal/advserv/FAOIUCNcs/Philippines.pdf
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).	http://www.fao.org/legal/prsol/kuemlangan.pdf

Citation	Description	Access
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.	http://icsf.net/icsf2006/uploads/publications/proceeding/pdf/english/issue_104/ALL.pdf
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.	http://www.fao.org/Legal/advser/v/FAOIUCNcs/Nigeria.pdf
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	http://www.aiatsis.gov.au/research/publications/Land&Water/pn30040_0.pdf
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
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 http://www.earthscan.co.uk/?TabId=101803&v=511459
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.	http://www.gret.org/ressource/pdf/harmonising.pdf
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.	http://www.nri.org/projects/waterlaw/Documents/Maganga_pce_28.pdf
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 HeinOnline

Citation	Description	Access
Meinzen-Dick, R. and Pradhan, R., (2001). 'Implications of Legal Pluralism for Natural Resource Management'. <i>IDS Bulletin</i> 32(4): 10-17	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.	Available through Wiley InterScience
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	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.	http://www.capri.cgiar.org/pdf/capriwp22.pdf
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	Abstract unavailable	Note: preview only http://books.google.com.au/books?id=eSn3q7H-IBMC&pg=PA75&ots=70GtJnXmYp&dq=L%20environnement%20Entre%20la%20loi%20et%20la%20Coutume%3A%20Quelques%20Observations%20Autour%20du%20Droit%20Djiboutien&pg=PA75#v=onepage&q&f=false
Mukherjee, P. (2004). 'Community Rights and Statutory Laws: Politics of Forest Use in Utrakhnd Himalayas'. <i>Journal of Legal Pluralism</i> 50: 161-172	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.	http://www.jlp.bham.ac.uk/volumes/50/mukherjee-art.pdf
Mwebaza, R. (1999). <i>How to Integrate Statutory and Customary Tenure: The Uganda Case</i> . Drylands Issue Paper E83. London: IIED	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.	http://www.iied.org/pubs/pdfs/7401IIED.pdf
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	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.	http://www.lead-journal.org/content/06050.pdf

Citation	Description	Access
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	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.	http://www.austlii.edu.au/au/journals/UNSWLawJl/1993/17.html
Nowlan, L. n.d. <i>Customary Water Laws and Practices in Canada</i>	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.	http://www.fao.org/legal/advserv/FAOIUCNcs/Canada.pdf
Onibon, A., Dabire, B. and Ferroukhi, L. (1999). <i>Decentralization and devolution in forestry</i> . <i>Unasyva</i> 199: 67p	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.	http://www.fao.org/docrep/x3030e/x3030e08.htm#local%20practices%20and%20the%20decentralization%20and%20devolution%20of%20natural%20resource%20mana
Orebech, 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
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	http://www.law.fsu.edu/journals/landuse/vol20_1/Owley.pdf
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 http://books.google.com.au/books?id=ieZTKL8Sx6MC&pg=PP1&dq=%22readings%20in%20african%20customary%20water%20law%22&pg=PP1#v=onepage&q&f=false
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.	http://www.fao.org/legal/prsol/lpo76.pdf
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	http://data.iucn.org/dbtw-wpd/edocs/EPLP-068.pdf

Citation	Description	Access
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	http://www.ajicl.org/AJICL2004/vol211/Royarticle.pdf
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	http://www.fao.org/Legal/ADVS/ERV/FAOUCNcs/Ghana.pdf
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>Dhurva 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: http://books.google.com/books?id=X4bW-_jEvXoC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false
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: http://www.jlp.bham.ac.uk/volumes/55/soreng-abs.htm
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 http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6V91-471Y3R3-12&_user=10&_coverDate=12%2F31%2F1991&_rdoc=1&_fmt=high&_orig=search&_sort=d&_docanchor=&view=c&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=9b3e89408b1bbf1e972d780bad346672

Citation	Description	Access
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.	http://www.iied.org/pubs/pdfs/G01252.pdf
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.	http://www.iied.org/pubs/pdfs/G01069.pdf
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	http://www.iied.org/pubs/pdfs/G01217.pdf
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.	http://cmsdata.iucn.org/downloads/vn_flegt_assessment_report_en.pdf
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.	http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1545527_code841223.pdf?abstractid=1545527&mirid=4
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 paper seeks to highlight the importance of customary law and practice for the realization of the three objectives of the CBD and to identify a research agenda to help define modalities for ensuring the effective recognition, respect and enforcement of customary law in any international regime on ABS.	http://www.ias.unu.edu/binaries/2/Tobin_PIC_Customary_Law.doc
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 paper draws upon the Peruvian experience in order to examine the current and potential role of customary law in national and international regulation of traditional knowledge. It is informed by analysis of international law relating to access and benefit sharing (ABS), traditional knowledge and indigenous peoples human rights, as well as by in-depth case studies of measures taken by indigenous peoples in Peru to protect their knowledge and resource rights. Based on this background analysis the paper explores the complementarity and conflicts between national traditional knowledge legislation and customary governance practices and makes recommendations for future research and the adoption and implementation of measures to protect traditional knowledge at local, national and international levels.	http://www.fnri.no/ABS/publication-n-40.html

Citation	Description	Access
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.	http://www.jlp.bham.ac.uk/volumes/48/sandt-art.pdf
Vani, M. S. (2002). 'Customary Law and Modern Governance of Natural Resources in India - Conflicts, Prospects for Accord and Strategies'. In Pradhan, 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.	http://dcapindia.org/pdf/20.pdf
World Intellectual Property Organization. (2006). <i>Customary Law & 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.	http://www.wipo.int/export/sites/www/tk/en/consultations/customary_law/issues-revised.pdf
Wynter, P. E. (1993). 'Legalize it!: Community participation in natural resource management'. <i>Unasyilva</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.	http://www.fao.org/docrep/v1500e/v1500e06.htm#legalize%20it!:%20community%20participation%20in%20natural%20resource%20management
Zerner, C. (1994). 'Through a Green Lens: The Construction of Customary Environmental Law and Community in Indonesia's Maluku Islands'. <i>Law & 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.	http://www.jstor.org/pss/3054024