

# Toolkit for enabling laws on community forestry

Version 1

## Introduction

The term ‘community forestry’ reflects various models and realities throughout the world. Ensuring these models have strong legal frameworks is crucial for community forestry to last and to help safeguard the expected long-lasting economic, social and environmental benefits.

Although national legal frameworks should be tailored to national circumstances, they have similar main attributes. Community forestry models also share a common objective: the management of forests by and for local communities and indigenous peoples (referred to hereinafter as “communities”).

In order to support community forestry reform processes, this tool identifies common key questions that decision-makers can use to develop or review laws<sup>1</sup> on community forestry (forest laws and other relevant sectoral laws). It consists of (1) key points for inclusive, consistent reforms that are conducive to consensus and (2) a series of questionnaires on ten key thematic areas aiming at providing a strong foundation for community forestry-related laws:

1. Land and forest tenure
2. Allocation of community forests
3. Community internal governance
4. Community participation and representation
5. Community forestry management
6. Access to markets
7. Benefit sharing
8. Conflict resolution
9. Enforcement
10. External support

This tool is based on research conducted by ClientEarth on enabling legal frameworks for community forestry.<sup>2</sup> This research analysed the laws of Nepal, the Philippines and Tanzania. Three countries that have a long-standing experience of implementing community forestry models.

Finally, this tool is intended as a living document and may be further refined on the basis of feedbacks from users. Therefore, the questions presented below do not intend to be exhaustive but rather to serve as guide for stakeholders’ discussions. It is also important that the legal system and context of the specific country analysed are taken into account while using the tool.

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<sup>1</sup> Here, the terms law, legislation and legal frameworks are used alternatively, referring broadly to the set of rules on community forestry, regardless of whether they are found in primary or secondary legislation.

<sup>2</sup> Faure N. et al. (2019) Communities at the heart of forest management: how can the law make a difference?, available at <https://www.documents.clientearth.org/library/download-info/communities-at-the-heart-of-forest-management/>

## 1 Key questions for conducting a reform on community forestry

The methodology developed to conduct a reform on community forestry can have an important impact on the legislation's content. The creation of an enabling framework on community forestry requires the reform process to be iterative and participatory. A wide participation of stakeholders to the process will be more likely to ensure the laws resulting from it are clear, complete and adapted to the local context. Moreover, it is important when conducting legal reforms to consider what should be included in the law or in implementing regulations. The box below on the next page provides some insights on this.

### A clear vision and objectives for the reform

1. Is the objective of the reform clearly identified? Do the various stakeholders agree to the objective? Is the main objective responsive to the concerns/needs formulated by communities?
2. Is the legislation on community forestry accessible, including to communities? Is it relatively easy to understand?
3. Before the reform process starts, has a contextual analysis (social, historical, cultural) be carried out? Has an analysis of the key provisions on community forestry, both in the main law covering community forestry and in sectoral legislation, be conducted? Does it include a legal gap analysis?

### Clear rights to ensure legal certainty

4. Is community forestry recognised in a legislative text? Does secondary legislation specify the implementing mechanisms and procedures for community forestry?
5. Do the sectoral laws form a coherent body of rules amongst themselves and with community-forestry related legislation?
6. Is the reform conducted in a coordinated manner between the various sectoral

administrations, in order to develop or revise a coherent legal framework?

### Iterative and participatory reforms

7. Does the reform consider and reflect stakeholders' empirical experience, in particular communities, including in their implementation of potential pilot projects?
8. Does the reform address specific needs as identified by communities and other stakeholders?
9. Can community forestry stakeholders directly participate in the reform?
10. Is the participation of stakeholders transparent and well-planned/coordinated (sharing of documents in advance, clear and jointly defined agenda, reasonable timelines for the elaboration and transmission of contributions, etc.)?
11. Is the participation of stakeholders taken into account by decision-makers?
12. Do the stakeholders invited to participate include:
  - Communities
  - Local administrations
  - NGOs
  - The private sector
  - Other key actors that have an interest in community forestry.

## 2 Key questions to ensure strong legal foundations on community forestry

### 2.1 Key questions on land and forest tenure

It is important that community forestry-related laws reflect traditions and the use of land and forests by local communities and indigenous peoples. This will help ensure these communities have clear, strong land tenure rights, and are able to benefit from community forestry programmes.

To achieve this, decision-makers need to consider the following questions before undertaking legal reforms:

#### Relationship between land tenure rights and forest rights of communities

1. Does the national legal framework recognise the customary land tenure rights of communities? Is this taken into account in the community forestry specific legislation (if different)?
2. Does the legislation identify the basis for the creation of a community forest, such as:
  - The customary rights of communities.
  - The customary land tenure rights of communities (even when they are not formally recognised).
  - Formal land tenure rights (land titles).
  - Other rights.
3. Which tenure rights<sup>3</sup> can communities exercise in the community forest:
  - Access rights (accessing the forest)
  - Use rights (using the forest and its resources)
  - Withdrawal rights (taking out resources, e.g. harvest of timber or non-timber forest products)

- Management rights (decision-making power in relation to the use of the forest)
- Exclusion rights (possibility to exclude outsiders)
- Alienation rights (possibility to rent, sell or dispose of the forest)

#### Taking into account the rights of indigenous peoples and neighbouring communities

4. Do community forestry-related laws take into account customary land use and tenure rights held by indigenous peoples, especially those laid out in legal texts or specific provisions? Do they also take into account the rights of neighbouring communities? How?
5. Does the law provide for the Free, prior and informed consent (FPIC) of indigenous peoples and neighbouring communities as a condition of the community forest allocation? If it does not, does the law provide that the compensation of indigenous peoples and neighbouring communities is a condition to the community forest allocation?

<sup>3</sup> For more information, see the bundle of rights explained by Almeida, F (2012) What rights, A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights, RRI, <https://rightsandresources.org/wp-content/exported-pdf/whatriightsnovember13final.pdf>

## 2.2 Key questions on the allocation of community forests

Designing a simple process to allocate community forests is crucial to ensure a good access to community forestry. The process should allow a group, identifying itself as a community, to undertake the procedure by itself or to seek external support.

### Establishing a clear community forestry regime

1. Does the legislation include a clear definition of community forestry and its objectives that takes into account the local context?
2. Does the legislation regulate on the size (whether it provides limits or not) and the type of forests or area within the forest domain where community forestry can take place? Are these areas (size and identified forest domain) appropriate to ensure the development of the community and the sustainability of the forest? Do they take into account the current use of forests by communities?
3. Does the legislation include provisions on the duration of the community forest allocation? If a set duration is provided, is it renewable and in which conditions?

### Who can manage community forests?

4. Does the legislation clearly identify the group that can have access to community forestry?
5. Does the legislation provide that local communities and indigenous people can manage a community forest?
6. Does the legislation provide for definitions of “community” or “local community” and of “indigenous people”? Are such definitions adapted to local contexts, in particular to sociocultural diversity? Do these definitions allow a social group to self-identify as one of the concepts (self-determination)?
7. Does the legislation require the community to identify its various components or interest groups (e.g., women, vulnerable people, certain categories of professions, etc.) so they

can be taken into account in the implementation of community forestry activities<sup>4</sup>?

### The legal structure required

8. Does the legislation require the community to use a specific legal structure to manage a community forest?
9. If so, does it specify the types of legal structures a community may set up to manage a forest? Does the community have a choice as to which legal entity it can set up?
10. Does the legislation ensure that the process to constitute such a legal structure is not overly complicated or costly?
11. Does the legislation provide that an individual is responsible on behalf of the legal entity?

### The allocation process

12. Does the legislation provide for the community to initiate the creation of a community forest?
13. Does the legislation provide for the community to conduct the allocation procedure themselves, with the possibility to seek support from others?
14. Are the conditions and steps of the allocation procedure relatively clear, simple and affordable for communities? Do they allow the community to follow the procedure themselves?
15. Are the forest inventory and/or other technical requirements adapted to communities' technical capacities?

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<sup>4</sup> Community components refer to ethnic, or family groups as well as social, cultural and economic sections of the community. Consequently, community components include vulnerable groups, but also various interest groups such as women, men, youth, craftspeople, or farmers.

16. Does the legislation detail the validation process required for the management plan? (see Section 2.5)
  17. Are the conditions to accept or reject an application to obtain a community forest clearly detailed in the legislation, in order to avoid discretionary decisions?
  18. Does the legislation provide for an appeal mechanism or the possibility to resubmit an amended application if it is rejected?
  19. Does the law explicitly provide for rules on the renewal of community forests? Is the renewal based on clear criteria and an accessible procedure?
- The administration's role**
20. Does the legislation provide a clear mandate for the administration within the community forest allocation procedure? Does it specify the role of the national, regional and local administrative bodies?
  21. Is the allocation process primarily assigned to the local forest administration? Does it have sufficient human and financial resources to fulfil its role?
  22. Does the legislation clearly provide a set period within which the administration has to handle the community's application at each stage of the process? Does the legislation specify whether an absence of response from the administration within this time limit results in the approval or dismissal of the application?
  23. Does the legislation allow (or require) the administration to support the community throughout the community forest allocation procedure?

## 2.3 Key questions on community internal governance

The law should include general accountability and transparency principles for the implementation of community forestry, and leave communities to establish specific mechanisms themselves to implement these principles in practice.

### Community forest decision-making bodies

1. Does the legislation guarantee that the community has decision-making power over the way they manage the community forest?
2. Does the legislation explicitly allow the community to create new decision-making bodies or to rely on existing bodies within the community to manage the community forest? Does it explicitly allow the community to decide on their composition, their role and their operational procedures?
3. Does the legislation establish the principle that an information sharing mechanism should be used by the decision-making body(ies) to share information with community members?
4. Does information sharing relate to the establishment and functioning of the decision-making structures and processes, as well as the community forestry activities?

### Community members' accountability

5. Does the legislation require that the community develop and use accountability mechanisms in order to ensure good governance of its managing bodies?
6. Does the legislation provide for a complaint mechanism to complement the community accountability mechanism?

### Information-sharing system

3. Does the legislation establish the principle that an information sharing mechanism should be used by the

## 2.4 Key questions on community participation and the representation of vulnerable groups

The legislation should include specific provisions in order to ensure the participation of all community members, particularly vulnerable groups such as women, indigenous people and the poorest or most marginalised members of the community. The law should entitle the community to determine the most suitable mechanisms.

1. Does the law provide a definition of 'community' (see Section 2.2)?
2. Does the law define 'vulnerable groups'? Does it specify the groups that may, in the local context, be considered vulnerable, including but not limited to:
  - Indigenous people;
  - Women;
  - Nomadic groups;
  - The poor; or
  - Minorities.
3. Does the legislation include specific provisions to ensure the involvement of vulnerable groups, in particular the most marginalised, in decision-making processes when local customs may not foresee such involvement? Does it, for example, provide for one of the following:
  - Organisation of regular community meetings with the participation of all community members?
  - Quotas to ensure the representation of vulnerable groups in community-forest decision-making bodies, including in executive roles, when it is adapted to the local context?
  - Setting a quorum for community forestry decision-making bodies' meetings to take place?
  - Positive action measures to enable the participation of vulnerable people in community forestry management and activities?

## 2.5 Key questions on community forest management

The law should enable community members to develop a community forest management plan, and support them with the help of simple templates and guiding documents. The conditions should be adapted to different situations, depending on the type of activities proposed, the size of the community, and the size of the forest.

### The rights stemming from the creation of the community forest

1. Does the legislation ensure the active management of the community forest by the community (rather than its passive participation in it)?
2. Does the legislation provide a list of activities prohibited in the community forest, for example activities likely to harm the environment?
3. Are possible restrictions to community-forestry management (for example, on clear-cutting, grazing or hunting in the community forest) likely to marginalise vulnerable groups? Does the law provide safeguards against this?
4. Does the legislation authorise timber harvesting in the community forest? Does it allow it without requiring an additional permit?

### The community forest management plan

5. Does the legislation require the adoption of a management plan prior to the authorisation of community forestry activities?
6. Does the legislation lay down the content of the management plan? Is its complexity adapted to the objectives of the community forest, its size and the activities proposed? Is the legislation supplemented by templates and guiding documents for communities to use?
7. Does the legislation clearly provide that the community develop the management plan? Is the management plan

sufficiently simple and affordable for the community to develop it by itself?

8. Does the legislation specify the duration of the management plan?

### The involvement of third parties in the community forest

9. Does the legislation authorise the involvement of third parties in the community forest? Are there specific rules regulating their intervention in community forestry operations as well as in the marketing of community forestry products (see Section 2.6)?
10. Does the legislation provide safeguards to prevent any contractual imbalance between a third party and the community, for example a standard contract or facilitated negotiation by a third party?
11. Does the legislation include accountability mechanisms to impose liability on the third party in the event of an offence in the community forest?

### The termination of the community forest

12. Does the legislation specify under which conditions the community forest may be terminated?
13. Does the legislation clearly detail the procedure leading to the termination of the community forest? Does it include the possibility for the community to appeal the decision?

## 2.6 Key questions on access to markets

To support the development of community forestry, the law should facilitate the sale of products and services deriving from the use of community forests. It does so when it contains provisions that are clear and beneficial for communities, including on taxes, transport and processing of products, as well as by providing economic incentives.

### The trade of community forest products

1. Does the law explicitly provide for the possibility for communities to sell community forest products or services?
2. Does the law allow communities to trade community forest products without requiring the setting up of a new legal entity by communities?
3. If the law requires a new entity to be established, can the community decide what kind of entity to set up? Is the procedure to create that entity relatively simple and affordable?
4. Aside from the forest legislation, are the rules on the creation and implementation of economic activities for community enterprises sufficiently clear and simple? Does the forest legislation provide for specific rules on the commercialisation of community forests' products?
5. Does the law provide for a favourable tax regime on the production and sale of products and services from community forests? Are there any tax exemptions on these products/services?
6. Does the law contain mechanisms to facilitate access to capital by

communities, through, for example, access to microfinance credits?

7. Does the law allow communities to set the price of products and services themselves?

### Rules on processing

8. Does the law provide for favourable rules on processing of community forest products? Does the law require a permit to process community forest products? If it does, is the permit allocation procedure adapted to the technical and financial skills of the community?
9. Does the legislation allow processing of community forest products within the boundaries of the community forest?

### Rules on transport

10. Does the law provide for favourable rules on the transport of community forest products? Is a transport permit required?
11. If it is required, is the permit allocation procedure adapted to the technical and financial skills of the community?



## 2.7 Key questions on benefit sharing

The law should provide for the general guidelines of a mechanism allowing communities to decide on how to share benefits from community forest activities equitably. The law should provide for safeguards ensuring information transparency and a monitoring system, in order to protect community members against elite capture.

### The ownership of benefits from community forestry activities

1. Does the law provide that monetary and non-monetary benefits from the use of the community forest belong to the community?

### Internal benefit sharing within the community

2. Does the law contain the principle of an equitable monetary and non-monetary benefit sharing between community members?
3. Does the law foresee that the community can develop their own benefit-sharing mechanism, with its own approach? Does it explicitly state that this mechanism must include vulnerable people?
4. Does the law provide for mechanisms to avoid the capture of monetary and non-monetary benefits, for example through :

- Setting up a community system to ensure transparency and the monitoring of benefit sharing?
  - Requiring a minimum percentage of the benefits to be reinvested or shared within the community?
5. Does the law require the setting up of an accountability system within the community?

### Benefit sharing with third parties

6. Does the law foresee a benefit-sharing mechanism with neighbouring communities that exercised customary rights in the forest before it was allocated? Does it include a mechanism to avoid benefit capture?

## 2.8 Key questions on conflict resolution

In the case of a conflict while implementing community forest activities, the law should guarantee for each member of the community the right to a fair dispute resolution mechanism, which can rely on traditional dispute resolution methods. In any case, access to a judicial dispute resolution mechanism (tribunal/courts) must be accessible to file a complaint or as a means to recourse.

1. Does the law pose the principle according to which the community can use its own dispute resolution mechanism to solve conflicts that can arise within the community forest? Does it recognise, amongst others, traditional dispute resolution mechanisms?
2. Does the forest law provide for the principle according to which if the community proceedings are not satisfactory, the parties can file a case to a judicial body?
3. In the case of a conflict between the community and the administration or between the community and a third party, is there a means to recourse for the community e.g. a redress mechanism, either administrative or contract-based?
4. Are the courts and tribunals sufficiently accessible (including with regards to proximity and costs) to ensure an effective remedy, including the right to appeal, for the communities?

## 2.9 Key questions on enforcement

It is important that the legislation identifies what constitutes an infraction to community forestry laws and that it sets out clearly the possible sanctions that can be applied. It is also crucial that the law identifies the competent person or authority that can enforce the law and impose sanctions. Finally, the law should clearly set out the role and duties of these enforcement bodies/persons.

### The enforcement of community forestry rules by the community

1. Does the legislation allow the community to perform checks in the community forest?
2. Does the legislation allow the community to impose sanctions when one of its members or an external person breaches the community forestry rules?
3. Does the legislation lay out the type of sanctions or other measures a community may impose, for example in its internal bylaws, such as reprimands or warnings?
4. Does the legislation provide for an appeal mechanism in front of a relevant jurisdiction for sanctions imposed by the community?

### Enforcement by the administration

5. Does the legislation clearly identify which administrative body is in charge of conducting checks in the community forest? Does it clearly specify its mandate?
6. Does the legislation provide for the frequency, the conditions/terms and the

purpose of the checks carried out by the administration? Do checks focus on all the rules set out in law and the community forest management plan, including social aspects?

7. Does the legislation foresee specific human and financial resources to be made available to the administrative bodies conducting checks? Are these resources sufficient?
8. Does the legislation require a formal notification mechanism to allow the community to fulfil its obligations prior to imposing any sanction?
9. Does the legislation provide clear sanctions proportionate to the violations of the law?
10. Does the legislation provide for an appeal mechanism for the community, in particular for the most serious sanctions such as the community forest withdrawal?
11. Does the legislation establish the liability of legal persons?
12. Does the legislation clearly identify who is responsible for the violations of the law committed within the community forest?

## 2.10 Key questions on support from external actors

It is essential to allow external actors, such as the administration, NGOs or the private sector, to support community members who implement community forestry to ensure its full development. Legislation has a role to play to facilitate or encourage this support.

### Support by the administration

1. Does the law specifically identify the relevant administrations that will be involved in supporting community forestry? Does it also identify at what level these administrative bodies will intervene (local, regional, national)?
2. Does the law clearly foresee how the sectoral administrations will coordinate on community forestry matters?
3. Does the law specify the mission and functions of these administrations in community forestry matters?
4. Does the law provide that, upon request from a community, the administration must give support? Does it provide that this support is free?

### Support by NGOs<sup>5</sup>

5. Does the law expressly allow that NGOs can give support to the community in matters related to community forestry?
6. Does it expressly allow NGOs to support communities both before the forest is allocated and when implementing community forestry activities?
7. Is there a specific law on the creation and functioning of NGOs, within the

legal framework? Is the creation of an NGO a simple and inexpensive process? Is this law favourable to the activities of NGOs, for example, does it authorise their independent funding by foreign donors and others?

8. Does the law provide that the administration can cooperate with NGOs in matters relating to community forestry?

### Support by the private sector

9. Does the law authorise the involvement of private operators in the functioning of community forestry?
10. Does the law contain contract templates that can be used between communities and private operators to ensure a balanced relationship? Are other safeguards provided for in the legislation?
11. Does the law regulate the way in which benefits should be shared between the private operator and the community?
12. Are the rules on the attribution of liability clear when a private operator exercises certain activities within the community forest?

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<sup>5</sup> By NGOs, we refer here to any groups or movements independent from the state and constituted to carry out non-lucrative activities.

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