



# Tenure Rights and Reforms

Emerging trends and lessons

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Oaxaca, Mexico

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1. Clarifying what we mean by tenure (reform)
2. Global trends and regional differences
3. Community tenure rights – new analysis
4. Lessons learned

Variety of understandings of “tenure” across the world

More than just ownership – a “bundle of rights”

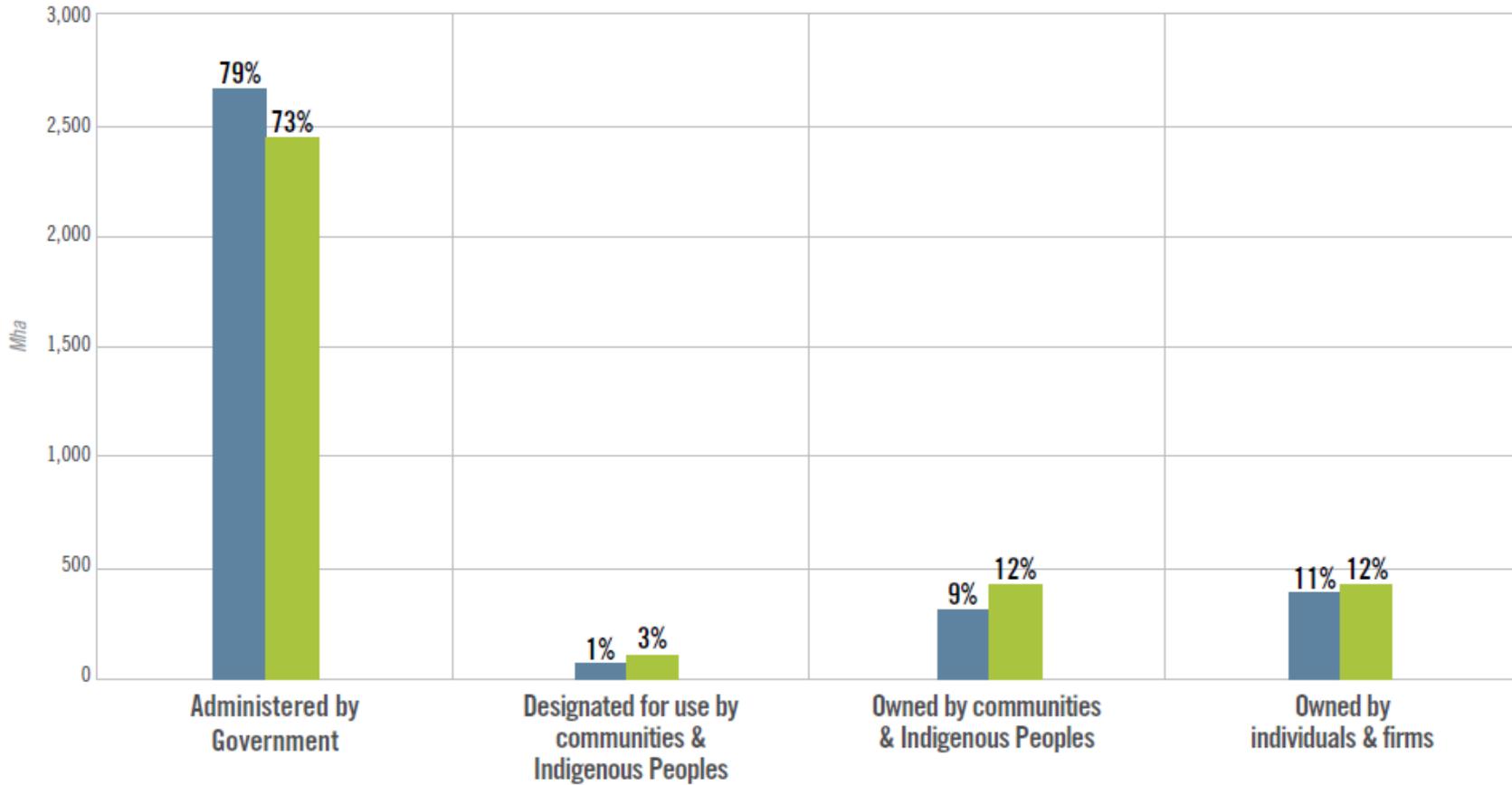
- Access
- Withdrawal
- Exclusion
- Management
- Alienation

Central to questions of management and benefits

A legal process changing the rights in the bundle of rights to natural resources (land, trees, other)

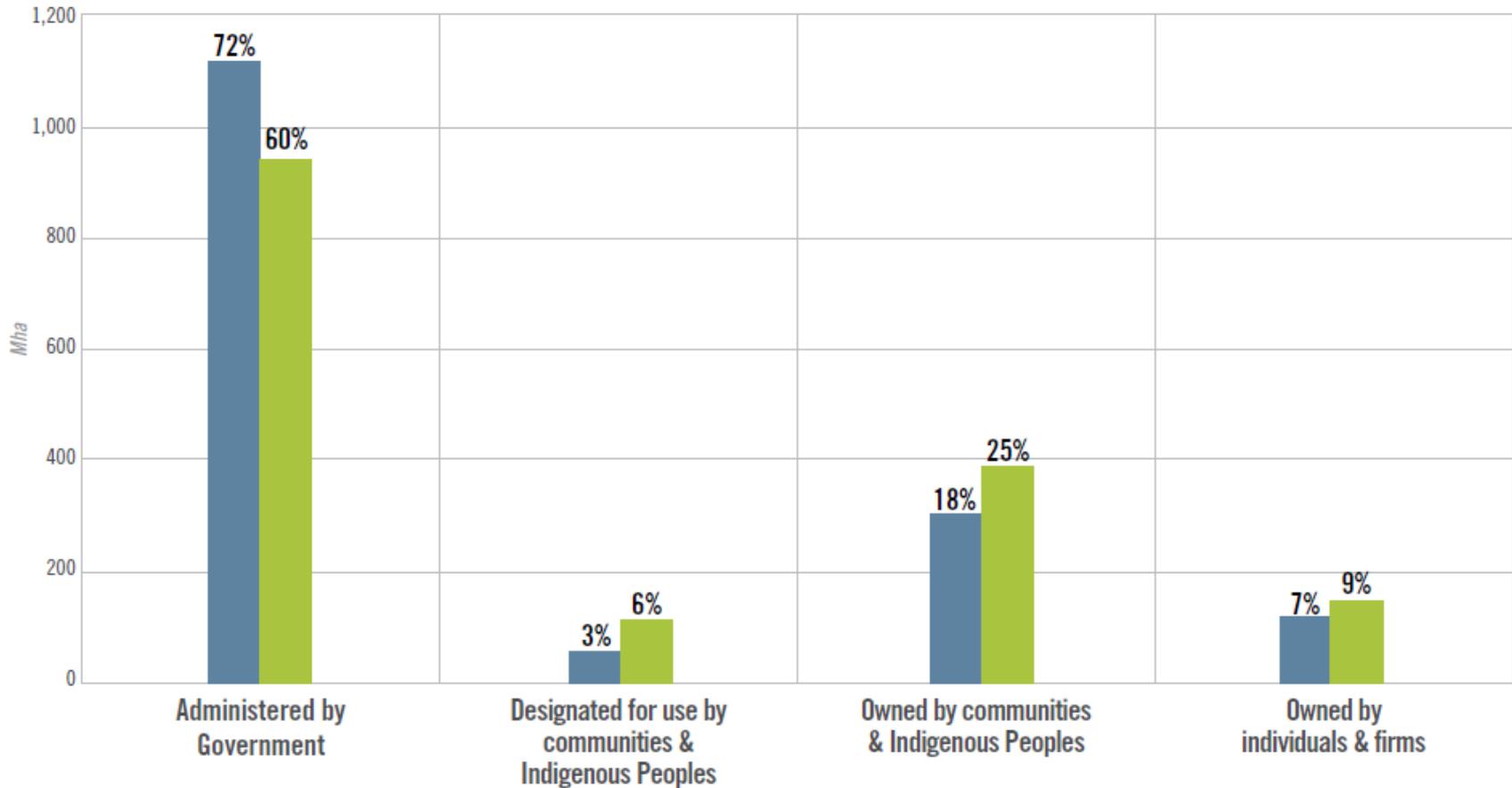
Often the process begins as result of a major shift: intense social pressures, natural disaster or political commitment.

Often long and contentious processes



■ 2002 ■ 2012

Note: The countries included here cover 85 percent of the world's forests.  
For full details see: [www.rightsandresources/tenuredata](http://www.rightsandresources/tenuredata).

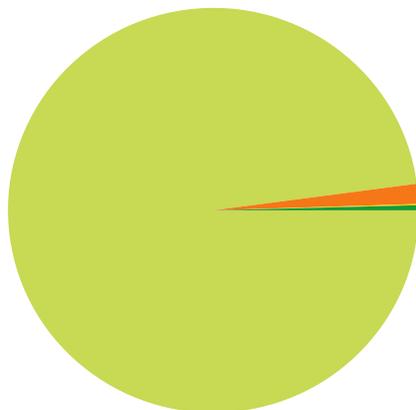


■ 2002 ■ 2012

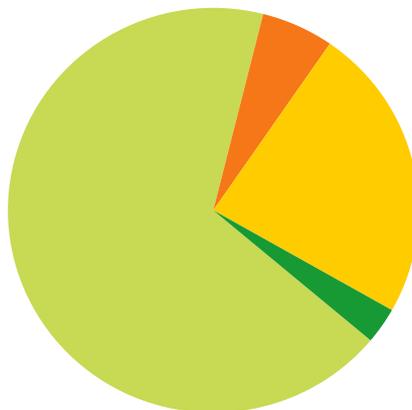
Note: The countries included here contain 80 percent of the total forest estate of developing countries.

For full details see: [www.rightsandresources/tenuredata](http://www.rightsandresources/tenuredata).

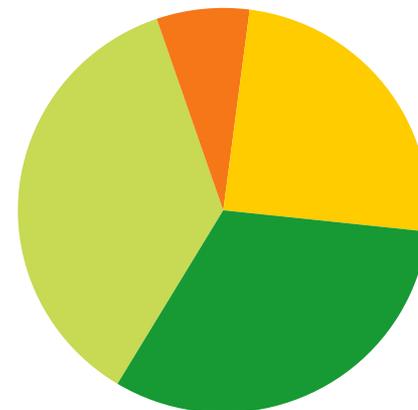
## Africa



## Asia



## Latin America



- Administered by Government
- Owned by communities and Indigenous Peoples
- Designed for use by communities & Indigenous Peoples
- Owned by individuals & firms

**SOURCES:** Sunderlin et al. 2008; ITTO/RRI 2009. Includes best available data as of December 2011 from 36 of the world's most forested countries, representing 85% of world forests<sup>8</sup>.



Rights-based, economic or forest management-based rationales

Latin America: Social mobilization, especially Indigenous Peoples

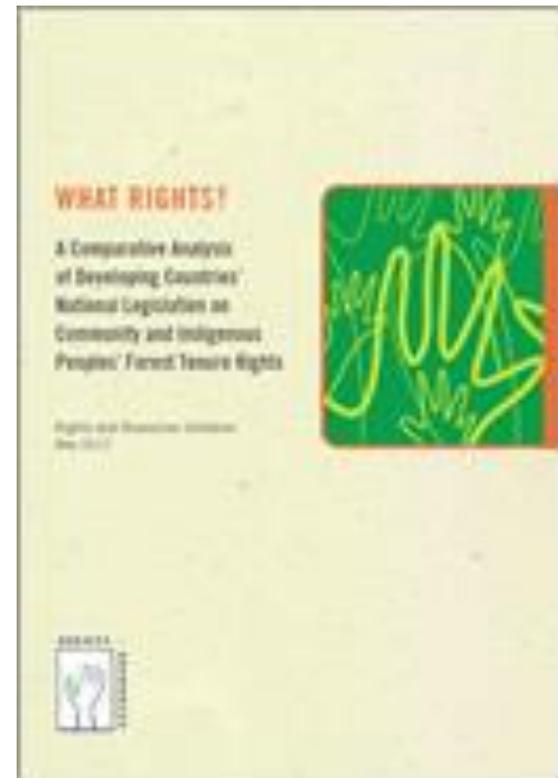
Africa: Colonial relics (concept of *terra nullius*), state-custom conflicts, decentralization

Asia: Diverse, but much reform in China, Vietnam

Big changes in “community” and “Indigenous Peoples” forest tenure over past several decades

Through titles, management conventions and licenses

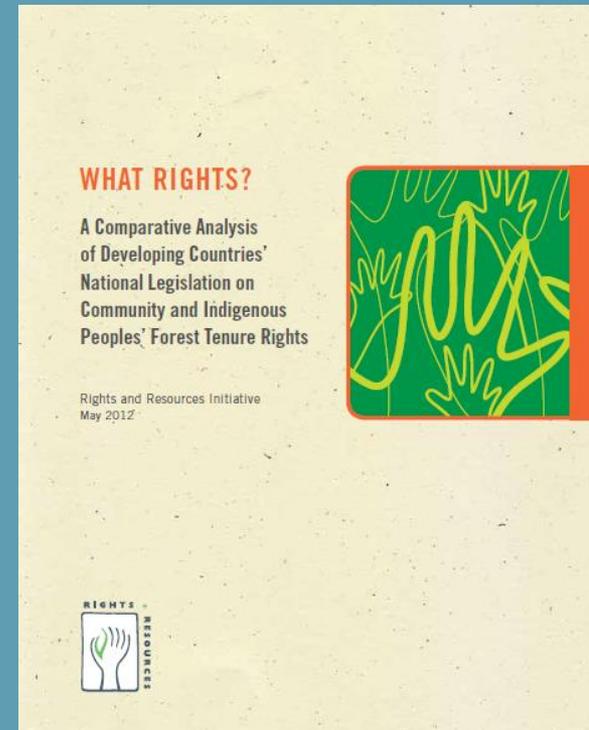
What rights in the bundle do these communities enjoy?



Objective: Analyze the “depth” of rights allocated to communities and Indigenous Peoples’ and create a database for wider use

## Research Questions

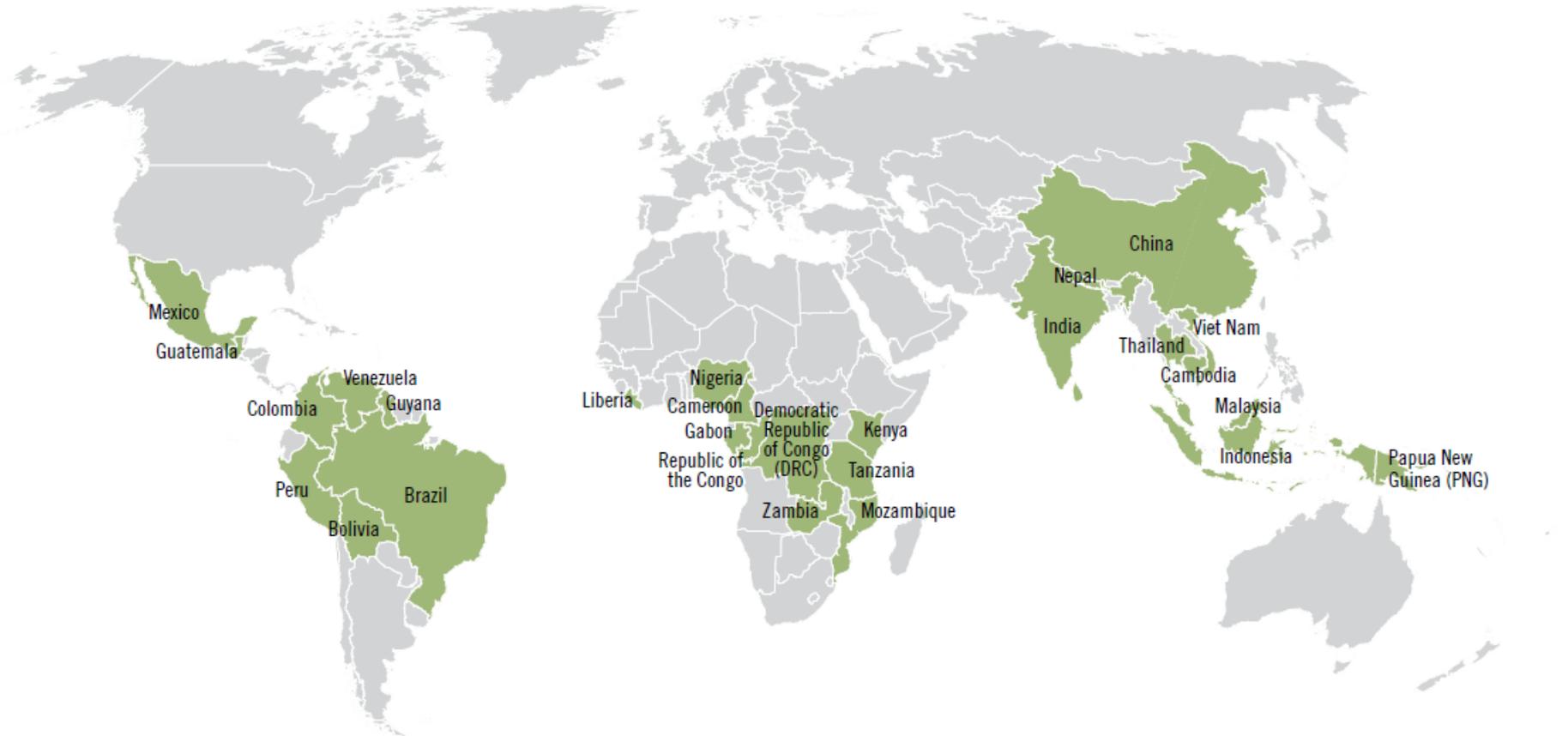
1. What are the statutory tenure regimes governing the rights of communities and Indigenous Peoples to forest resources?
2. What rights do they accord to communities and Indigenous Peoples?



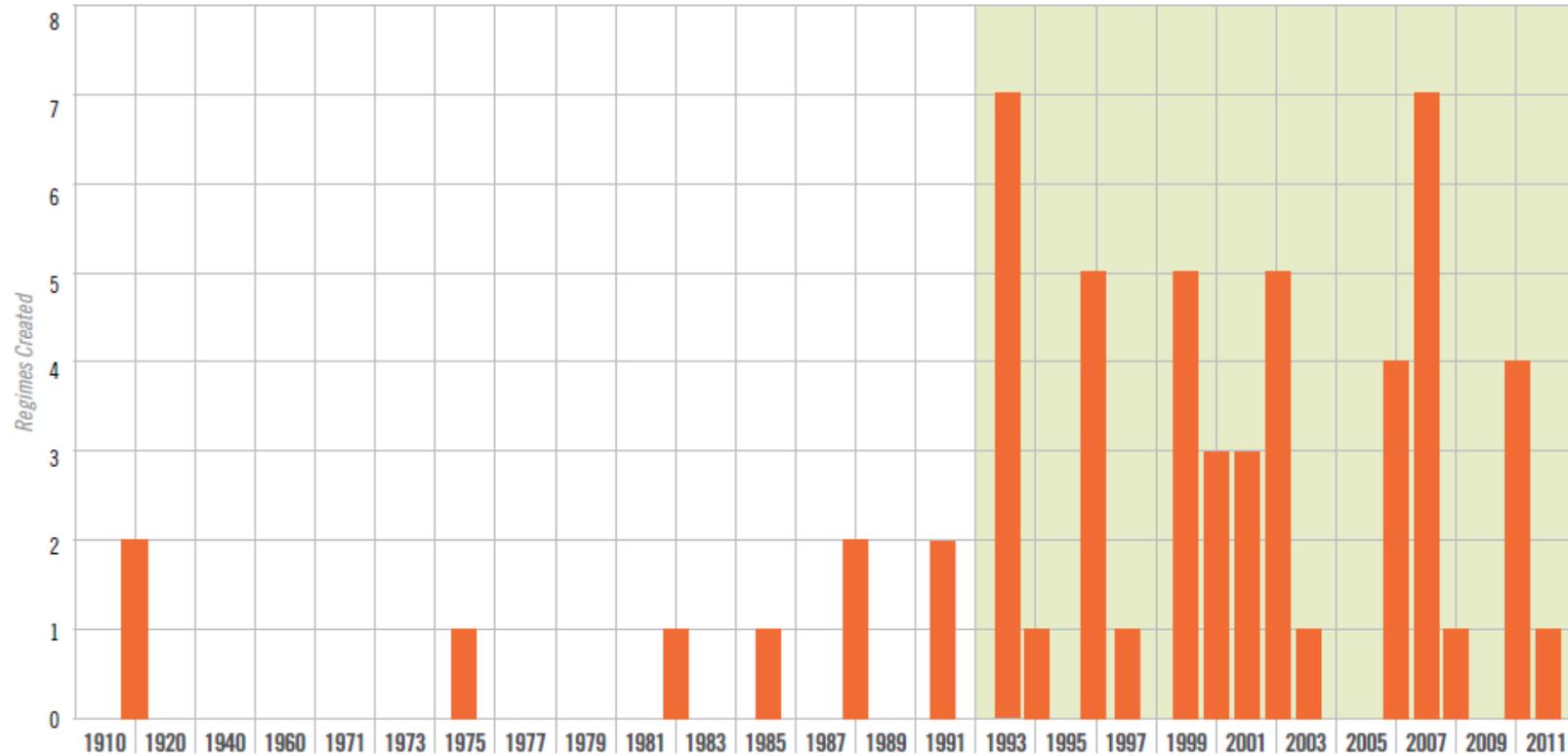
# 75% of the forests in developing countries

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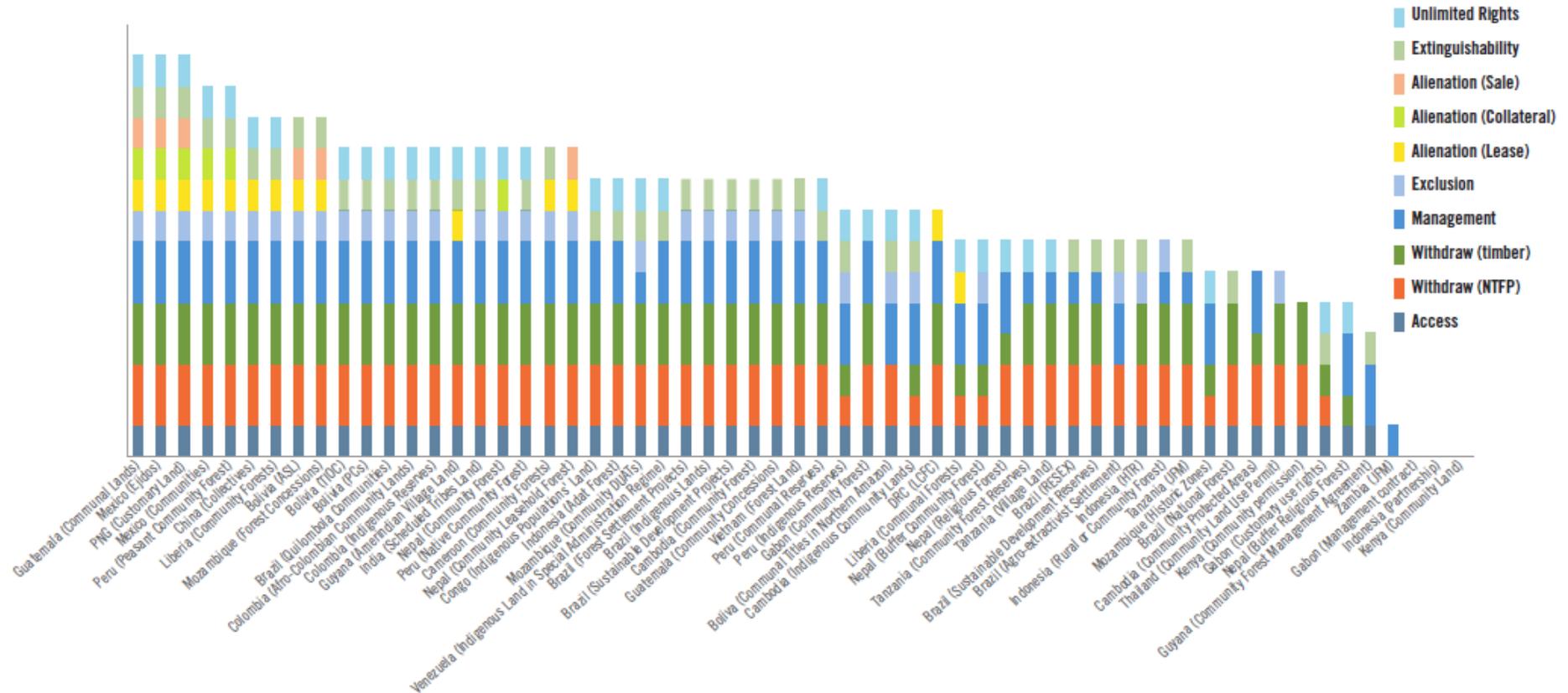


# 86% of the regimes established after 1992



Source: Forest tenure database. See [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata).

# Rights in each regime

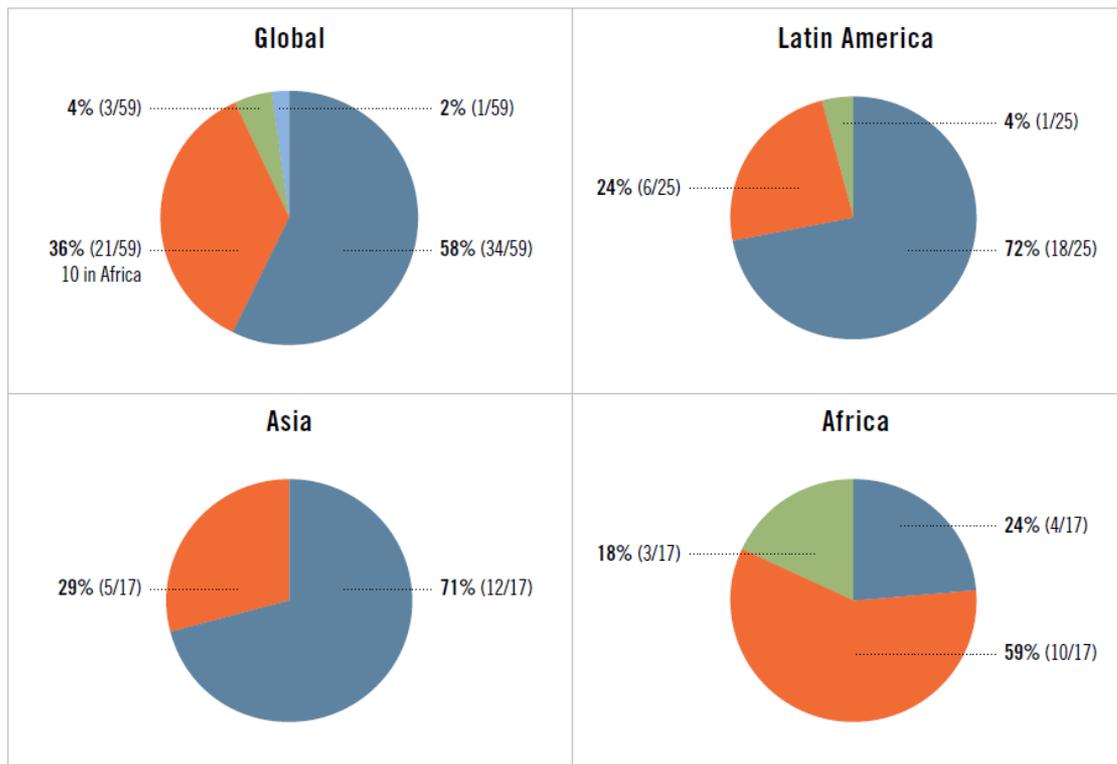


Source: Forest tenure database. See [www.rightsandresources.org/tenuredata](http://www.rightsandresources.org/tenuredata).

- 95% of regimes **restrict community use** of forest resources
- Just over half of the tenure regimes (32 of 59) recognize the rights of Indigenous Peoples and communities to **access, commercial exploitation, and forest resource management**. But in all cases these rights are contingent on **compliance with state mandated** management plans and/or the stipulations of licenses.
- 36% of the surveyed tenure regimes **do not recognize the right** of Indigenous Peoples and communities **to exclude** others from their forest lands.
- 66% **forbid them from alienating** their lands or their rights to forest resources (through lease, use as collateral, or sale).
- In over half of the regimes (34 of 59), **rights are recognized for an unlimited period**.
- In 40 of the regimes, **the government must comply with due process and provide adequate compensation** should it decide to revoke a community's rights.

- Latin America has the highest percentage of regimes guaranteeing the rights of access, commercial exploitation, and forest resource management.
- In Asia 31% (5 of 16) of those regimes communities only have the right to use timber resources for subsistence needs. Tenure reforms in China and Viet Nam not only recognize communities' rights to forest resources but also increasingly facilitate, if not encourage, the allocation of forest land to households.
- Since early 2000, countries in Africa have established laws recognizing the rights of Indigenous Peoples and communities to forest resources. In 35 % (6 of 17) of the surveyed regimes established by national legislation, rights cannot be implemented due to a lack of supplementing regulations that clearly define the recognized rights and the processes by which such rights maybe allocated in practice.

**FIGURE 3:** Do national laws that recognize tenure rights permit Indigenous Peoples and communities to exclude outsiders?



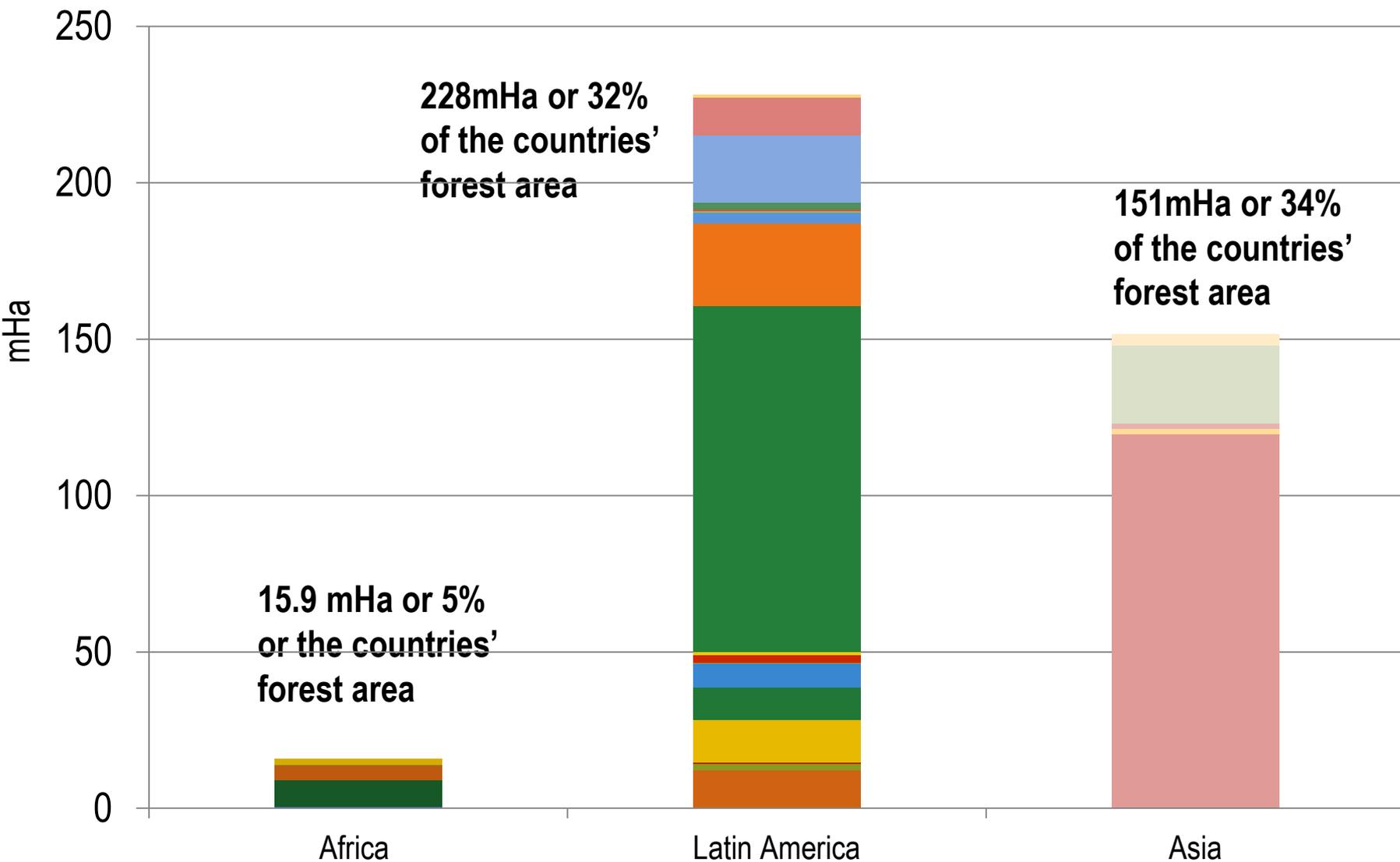
■ Yes ■ No ■ To be determined\* ■ Case by case\*\*

\* Regimes established by constitution or law but lack subsequent law or regulations defining the extent of rights.

\*\* Extent of rights defined on a case by case basis by individual agreement.

Note: Rounding errors acknowledged.

# Area under the regimes by region, 2012



## Who has an interest?

Government

Customary authorities

Citizens

Special interest groups: women's associations, etc

Private sector

Right-holders

## What is the objective of reform?

Recognize rights gained through historic occupation?

Realign production systems?

Reflect reality?

Change reality?

Tenure security for the poor?

Reform requires political will

Implementation requires sustained political will

Multiple sectors and institutions (conflicts in law: mining, ag, forest)

Plan for a long road – iterative, learning process

Awareness raising of new or changed rights

Training of service providers and judiciary

Mobilization of non-governmental actors

Costs vary depending on precision, location, surface area (individual plots versus territories)

Contestation, clarification, negotiation are part of the process

Mozambique: *Community territories under pressure*

Brazil: *Cleaning up a complex situation*

South Africa: *Customary authorities and power*

China: *Increased choice leads to better outcomes*

South Sudan: *recognizing community rights “land belongs to the community” what about forests?*

Indonesia: *Tenure Reform Road Map; Constitutional Court Decision*

THANK YOU

## The status quo:

- **The dominant economic model for forestry in Africa has been state-controlled, export-oriented, industrial scale concessions.**
  - This model dates from the colonial period and relies on central state ownership of forests
  - Post-independence governments tend to maintain this, though evidence increasingly shows that this model does not promote balanced national economic growth.

## Room for reform:

- **8 of the 20 most-forested countries that adopted important and new forestland reforms since 2000 are in Africa.**
- **In these 8 countries, the area of public forest designated for use by communities and indigenous people more than quadrupled between 2002 and 2008.**

- Some important examples of reforms in the region include:
  - **Liberia's** watershed Community Rights Law and anticipated land reforms;
  - **Cameroon's** reforms to its land and forest codes;
  - **The Democratic Republic of Congo's** 2002 forest code (replacing the 1949 colonial text) and upcoming community forestry regulations;
  - **The Sahel's** ambitious decentralization of land and resource management in Mali, Burkina Faso, Niger, Senegal (since the 1990s).
- Despite this progress, forest tenure in Africa remains contested and governments still own and control 98% of total forest area.
- While the period between 2002 and 2008 saw a five percent increase in recognition of communities' tenure regarding natural resource management, from 2008 to 2010 virtually no change in tenure occurred.

# Methods, assumptions, caveats

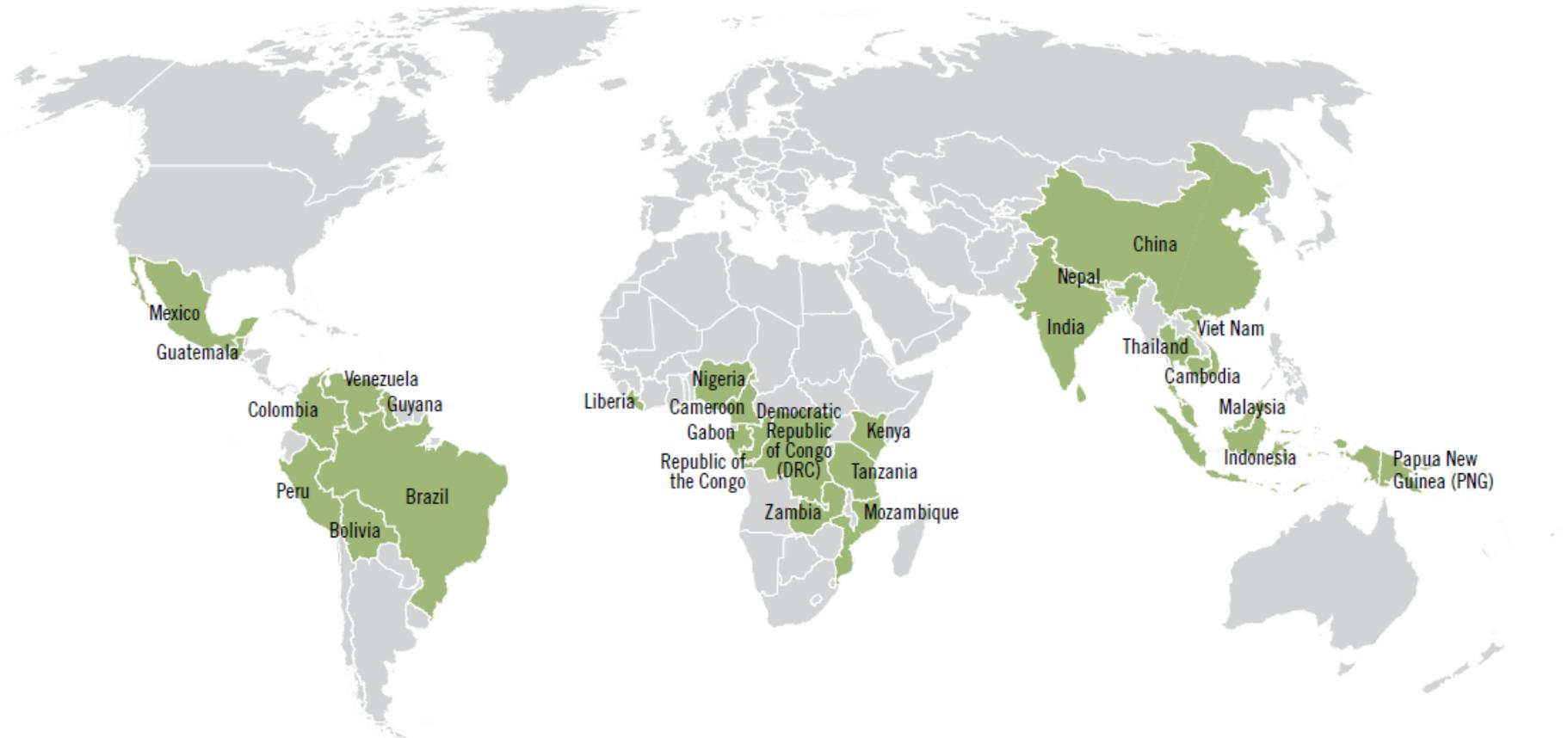
- Legal analysis by international legal expert
- Over 170 relevant legal documents identified and consulted
- Over 90 experts reviewed preliminary data
  
- The analysis is based on **binding laws and regulations** only.
- The analysis is based on **national level** legislation only.
- When interpreting the data we use **best-case scenario**.
  
- Just because it exists on paper does not mean it exists in reality.



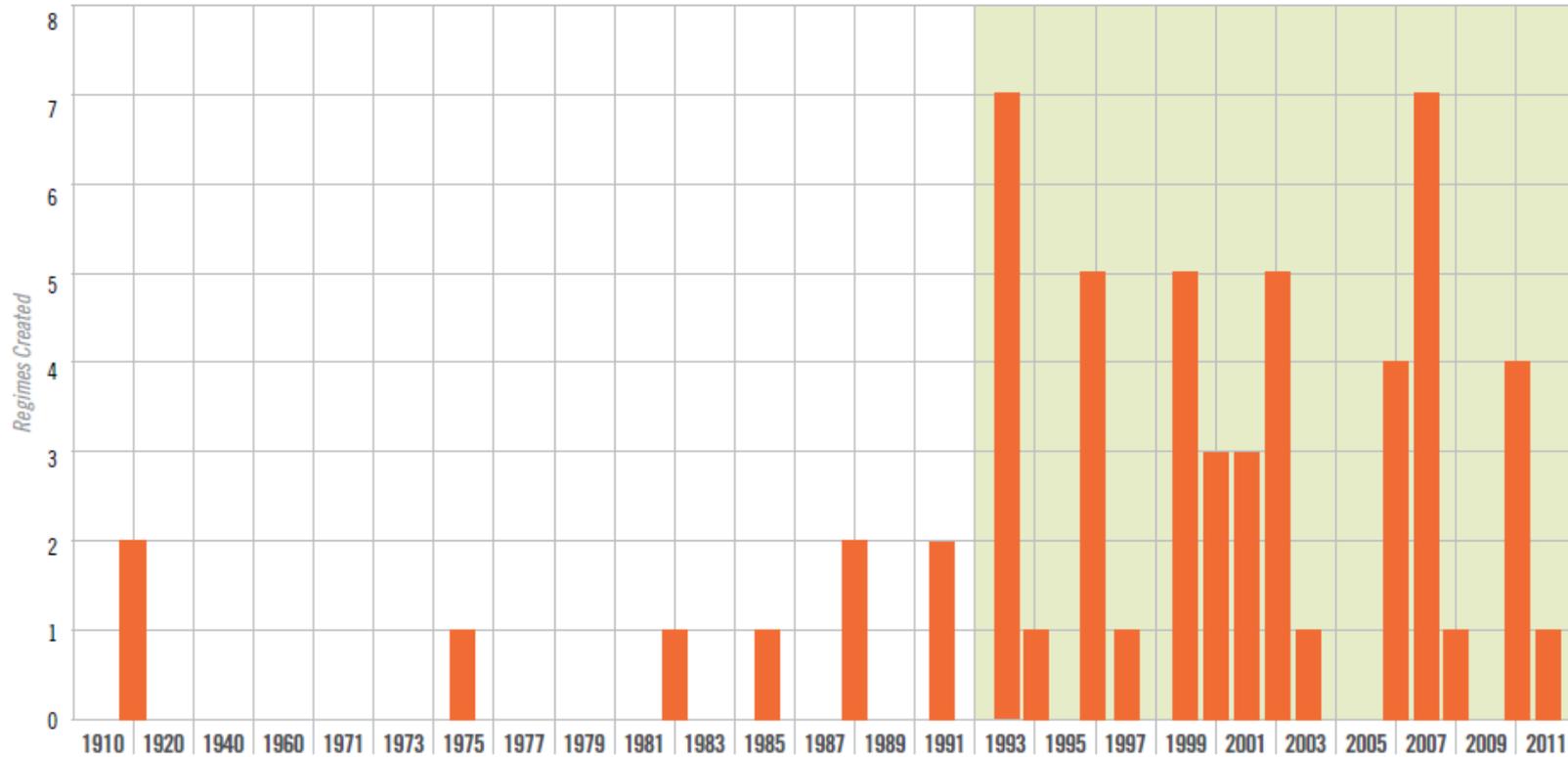
# 27 Countries; 75% of the forests in developing countries

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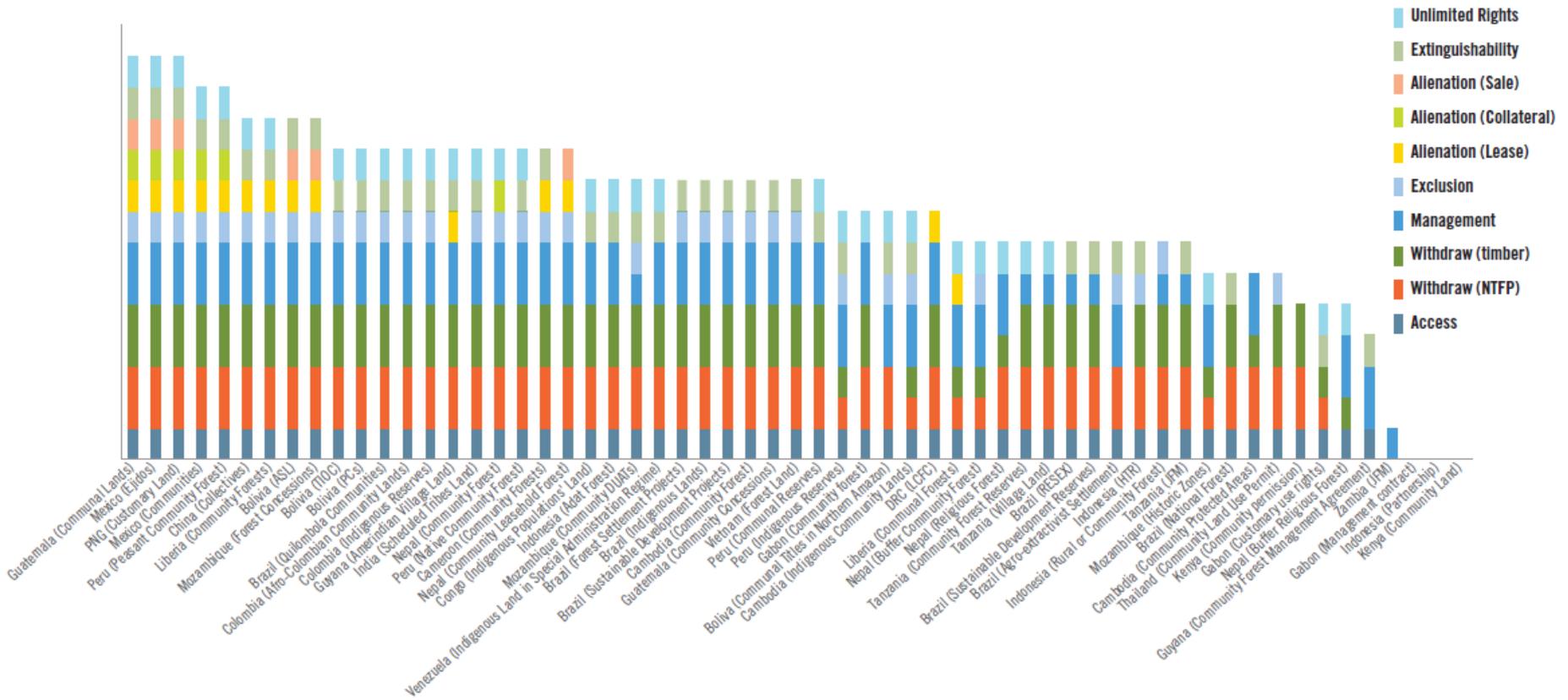


# 86% of regimes established after 1992



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# The Bundle of Rights in 59 regimes



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## **Putting community tenure regime into place is often mired in bureaucratic requirements.**

- Costly land delimitation processes, requirement for the community to acquire legal status, complex legal language, proof of traditional use of forestland and short time frame to comply with complicated procedures established by Law.

## **The exercise of community forest tenure rights is often dependent on strict compliance requirements**

- These strict compliance requirements to management plans are frequently onerous to prepare and conform to, and seldom recognize traditional ways of managing natural resources practiced by indigenous peoples.

## **Globally 15% (9/59) of the regimes cannot be implemented because of a lack of implementing regulations.**

- Two-thirds of such regimes are found in Africa. 35% of surveyed regimes in Africa cannot be put into practice.