



WWF

REPORT

JUNE

2012

Community Tenure and REDD+

Jenny Springer and Peter Bille Larsen

Contents

1. Introduction	3
2. What is tenure?	4
3. Why are tenure issues important to REDD+?	4
4. How is tenure reflected in REDD+ frameworks?	7
5. What is the current status and what are trends in recognition of community tenure?	8
6. What are some experiences of community tenure recognition?	9
7. What are key elements of effective and equitable tenure systems, with reference to REDD+?	11
8. Opportunities for supporting strengthening of community tenure in relation to REDD+	17
9. Conclusion	20
10. References	21

Acknowledgements

WWF field experiences highlighted in box examples in the text were contributed by Zulfira Warta, Arif Data Kusuma and Serge Darroze. The paper benefited from reviews and comments received from Jeffrey Hatcher, Cristina Eghenter and Vanessa Retana.

WWF gratefully acknowledges the support of the Government of Norway through a grant administered by the Norwegian Agency for Development Cooperation (Norad) to produce this report. The views expressed herein are those of the authors and are not intended to reflect the policy views of either of these entities or their affiliates.

1. Introduction

The emergence of reducing emissions from deforestation and forest degradation, and conserving, sustainably managing and enhancing forest carbon stocks (collectively referred to as REDD+) has generated great interest as a possible means of increasing support for the forest stewardship activities of indigenous peoples and local communities. If done well, REDD+ initiatives could contribute to strengthening community land and resource rights, empowering community-based management and diversifying livelihoods through participation in REDD+ activities. Yet REDD+ has also sparked concerns about possible adverse impacts on indigenous and community rights and livelihoods, such as restrictions on land and resource rights, increased centralization of forest management and inequitable benefit-sharing. Reducing these risks and strengthening incentives for community stewardship will depend on establishment of safeguards as well as enabling conditions that help to secure the rights and livelihoods of indigenous peoples and local communities in relation to REDD+.

Secure community tenure is a critical foundation for equitable and effective REDD+ initiatives (Cotula and Mayers 2009). Recognizing and respecting customary rights to lands, territories and resources supports more effective stewardship of forests and safeguards against potential displacement risks. Clear rights to lands and resources will also significantly influence who ultimately receives any future benefits from REDD+. Therefore, securing community forest tenure is fundamental to ensuring REDD+ benefits reach communities.

Globally, the great majority of forest land is formally held by states, despite underlying customary claims, recognized roles and contributions of indigenous and local communities to forest stewardship, and limited contributions of state-controlled forests to local livelihoods. Over the past two decades, gradual processes of devolution have begun to shift forest tenure from states to indigenous peoples, local communities, and private entities (Hatcher and Bailey, 2011). This “tenure transition” has been driven by a range of sources: social movements (especially for rights of indigenous peoples in Latin America), recognition that state forest management capacities are limited and that communities may produce better results, and interests to contribute to improvements in the livelihoods of indigenous and local communities by enabling greater access to and sustainable use of forest resources. Still, unclear and overlapping tenure remains common in forest areas.

In this context, REDD+ presents both opportunities and challenges. Among the challenges, some have highlighted the risk that increases in the value of forest lands sparked by REDD+ may lead to “land grabbing” by more powerful interests where community rights are not yet secure, or at least may slow down formal recognition by governments (Griffiths 2009). Opportunities include that the importance of tenure to equitable and effective REDD+ outcomes will provide an impetus to ongoing efforts to strengthen the security of community forest tenure. Even where opportunities for tenure reforms exist, however, there are risks, in that past efforts to formalize rural land and resource tenure have often disrupted traditional systems and/or been insufficient to support sustainable community-based management and livelihoods. In the process, many lessons have been learned about how to promote and support effective tenure policy reforms and their implementation in practice.

This paper reviews and synthesizes key issues, developments and lessons from recent literature and experience with tenure policy reforms and implementation, in terms of the particular opportunities and challenges presented by REDD+. The main aim of the paper is to promote and support increased attention to community tenure issues within REDD+ processes, by serving as a resource for organizations to better understand and address tenure issues as part of their work on REDD+. It begins with sections introducing tenure concepts, background information on tenure trends, the importance, challenges and opportunities to address tenure issues in REDD+ contexts, and consideration of how tenure issues are treated in emerging REDD+ frameworks. The main sections of the report look at the key elements needed for equitable and effective tenure systems – addressing both legal and/or policy changes, and implementation support – that will provide a foundation for community-based REDD+, and a how community tenure can be promoted and supported in the context of REDD+ processes.

2. What is tenure?

Following Sunderlin, Hatcher and Liddle (2008, 3), we define tenure for the purposes of this paper as “systems [that] define who owns and who can use what resources for how long, and under what conditions.” While tenure is often equated with ownership, tenure is more usefully understood as a “bundle of rights” (Schlager and Ostrom 1992) that may include various combinations of:

- **Access rights** – rights to enter an area
- **Withdrawal rights** – rights to extract resources, such as through collection of non-timber forest products, timber harvesting, harvesting of agricultural products, etc.
- **Management rights** – rights to make decisions about access and use, and to undertake management activities
- **Exclusion rights** – rights to determine who can – and cannot – access, harvest or manage lands and resources
- **Alienation rights** – rights to sell and/or lease management or exclusion rights

Both customary and statutory tenure systems (see below) are often composed of complex combinations of these rights – which may also vary across the specific geographical area or natural resource (water, non-timber forest products, timber, wildlife, wild foods, etc.) to which they refer. In the context of REDD+, carbon has become another resource – not addressed in previous tenure systems – for which rights need to be clarified.

Tenure rights arise from a range of sources, including both customary and statutory law. **Customary tenure** refers to systems derived from traditional or ancestral occupancy and use of lands and resources. “Unlike introduced landholding regimes, the norms of customary tenure derive from and are sustained by the community itself rather than the state or state law” (Alden Wiley 2011a, 1). Customary tenure is often viewed as synonymous with communally held lands or resources; and while partly true, customary tenure may also involve private forms of property. **Statutory tenure** refers to rights formally enshrined in the laws of a state. Historically, many customary and statutory systems have been overlapping, with unrecognized customary rights and tenure systems operating over lands and resources formally claimed by states.

Community tenure is here used broadly to cover the diversity of tenure systems found in a given community. These systems may include both communal and individual property. **Tenure security** refers to certainty that rights to land are recognized, respected and protected.

3. Why are tenure issues important to REDD+?

Community tenure issues have received substantial attention in REDD+ discussions for several reasons.

- ▶ **Tenure security safeguards against risks of involuntary resettlement:** One risk highlighted by critics of REDD+ is that the potential to generate increased value from forests lands could lead to displacement of communities – physical displacement and/or involuntary restrictions on resource access or use – by other, more powerful actors. Supporting community tenure guards against this displacement risk, in keeping with respect for the rights and livelihoods of indigenous peoples and local communities. Reducing such risks can also help generate broader stakeholder support for REDD+, and provide a foundation for the contributions of community forest stewardship to REDD+.
- ▶ **Tenure status may affect communities’ eligibility to participate in REDD+ activities:** Secure tenure is often an eligibility requirement for participation in the kinds of Payment for Ecosystem Service (PES) schemes that are likely to be a feature of REDD+ (Tacconi, Mahanty and Suich 2009) and, more generally, provides practical support to their implementation (see below). Thus, lack of clear tenure rights may limit participation of indigenous peoples and local communities – key actors in forest conservation and management – in REDD+ activities.

- ▶ **Tenure security supports more effective forest stewardship (and therefore REDD+).** Recognizing and respecting customary and other community rights to lands, territories and resources provides a foundation for more effective REDD+ outcomes. As demonstrated through research on common property systems, rights to access and manage resources, and exclude others, are critical foundations for sustainable community-based forest management. Without rights to benefit from forest-based income (including from REDD+) communities also have limited incentives to engage in forest stewardship activities that will reduce emissions. Without secure tenure, communities may also not be able to prevent encroachment on their lands and therefore to control deforestation or degradation activities by others.
- ▶ **Tenure supports the exercise of traditional knowledge and practices contributing to REDD+:** Related to the above, tenure security enables indigenous peoples and local communities to make use of their traditional knowledge and forest management systems, which are widely recognized to contribute to forest conservation and sustainable use (e.g., see Agenda 21, the Convention on Biological Diversity, ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries and the UN Declaration on the Rights of Indigenous Peoples). Supporting the forest stewardship roles and traditional forest management systems of indigenous peoples and local communities helps promote the application of traditional knowledge and practices to REDD+.
- ▶ **Tenure will substantially influence the distribution of potential benefits from REDD+:** Clear rights to lands and resources will also significantly influence the potential for communities to receive benefits from their participation in REDD+ activities. Determinations of the distribution of benefits will certainly take considerations of property rights into account. In addition, the power of communities to claim and negotiate benefits will depend on their authority over the forests that are generating emissions reductions (USAID 2011 - see Box 1). Therefore, securing community forest tenure is fundamental to ensuring REDD+ benefits reach communities.

Box 1: Tenure and benefit-sharing links, based on analysis of case studies

A recent USAID analysis of case studies found that tenure regimes significantly influence whether and how much benefit communities can access from management of natural resources. For example, the case of Mexico shows that communities with secure and unambiguous ownership rights have more bargaining power and receive a higher share of the benefits from natural resource management. In other countries, where rights are shared between communities and the state – examples include Tanzania and Nepal - community shares of revenues were found to be closely linked to the strength of their rights to land and forests. Communities lacking statutory rights – such as in the Democratic Republic of the Congo – may still be able to access benefits, particularly if their customary or de facto use of the forest is widely recognized in practice. However, their access to benefits tends to be based on negotiations with the statutory rights holder(s) rather than law - and typically the community is the less powerful actor in the negotiating relationship.

Source: USAID 2011. *Institutional Mechanisms for Sharing REDD+ Benefits*. Property Rights and Resource Governance Project, USAID.

- ▶ **Carbon rights will also be shaped by underlying forest tenure:** A common emerging feature of carbon rights legislation is to grant carbon rights to current landowners. Thus, potential to participate in REDD+ carbon markets and generate returns from emissions-reducing activities will also likely depend on underlying forest land and resource rights.
- ▶ **Tenure is itself a benefit.** Formal recognition of rights is often viewed by communities as an important benefit in itself; for example, in their participation in PES programs (Tacconi, Mahanty and Suich 2009). Potential to better secure rights and resolve conflicts is also likely to be a substantial incentive associated with REDD+.

The importance of tenure is not hypothetical. REDD+ is already, even before an international regime has been consolidated, having consequences for how forests are managed and how questions of community rights are dealt with at both policy and place-specific levels. On the positive side, it is reviving attempts to resolve longstanding tenure claims and conflicts. For example:

- In Peru, the process of preparing a Readiness Preparation Proposal for the Forest Carbon Partnership Facility has opened political space to address outstanding territorial concerns of indigenous peoples (see Box 2).

- In the Democratic Republic of the Congo, frameworks for community forestry legislation have recently been drafted through a project led by Forest Monitor (Forest Monitor 2010).
- In Indonesia, REDD+ discussions have provided impetus to policy openings by senior government officials to addressing long-standing issues of recognition of customary (*adat*) rights to land and natural resources, and to development of a civil society roadmap for tenure reform (Safitri et al 2011). Meanwhile, REDD+ initiatives are providing resources to increase the security of community tenure in specific sites, under existing tenure instruments (see Box 3).

On the negative side, risks include that REDD+ could contribute to the recentralization of authority over land, slow down government processes of recognition or be implemented through exclusionary approaches that would restrict traditional uses or result in “land grabs.” The arrival of outsiders and speculators – such as “carbon cowboys” in the Amazon – demonstrate the vulnerability of community rights. A concerted effort on community tenure security is therefore critical to make effective use of the window of opportunity provided by REDD+ processes.

Box 2: Addressing indigenous territorial rights through the Peru RPP process (March 2011)

Dialogue between the Peruvian government and Peru’s national Amazonian indigenous federation – AIDESEP – linked to development of Peru’s Readiness Preparation Proposal (RPP) for the Forest Carbon Partnership Facility resulted in several key agreements addressing longstanding indigenous tenure concerns. These included agreements by the government to:

1. Initiate actions to reform national land legislation in order to align it with international obligations to recognize and demarcate indigenous peoples’ traditional territories.
2. Designate \$200,000 from the R-PP budget and find a further \$800,000 to recognize and demarcate outstanding claims in the Loreto region.
3. Prioritize funding for recognition of indigenous territories using other REDD+ funds.
4. Recognize the Indigenous REDD+ committees to be established at national and regional levels and ensure their meaningful participation in the national REDD+ process.

Source: Espinosa Llanos, Roberto and Conrad Feather. 2011. *The reality of REDD+ in Peru: Between theory and practice*. FPP, CARE, FENEMAD, AIDESEP.

Box 3: Village and Community Plantation Forests in Indonesia: exploring tenure alternatives

While national processes to resolve customary tenure recognition in Indonesia are ongoing, existing forest legislation allows for increases in community tenure security through the establishment of Village Forests (Hutan Desa) and Community Plantation Forests (Hutan Tanaman Rakyat). WWF Indonesia is supporting a collaborative effort among Dayak indigenous communities, local people and the district government in Kutai Barat, East Kalimantan province to identify and advocate appropriate options for community forest management through these instruments. 76 % of the 3.2 million ha Kutai Barat is covered by forest. The district government developed a preliminary map and proposed 175,000 Ha to be established as village forests; however, according to eligibility criteria by the Ministry of Forestry, only 52,000 ha outside active timber concessions or natural forest under national moratorium will be approved for Hutan Desa. With regard to community plantation forests, which enable communities to use and rehabilitate degraded state forests, the district government proposed 72,000 Ha but the Ministry of Forestry has considered only 17,000Ha to be eligible. WWF is now supporting communities in 9 sub-districts to improve capacity of the village forest management groups and develop management plans, including for reduction of carbon emissions and conservation of high-biodiversity areas. WWF will also work with villages to facilitate the drafting of village regulations to recognize forest areas traditionally protected by the communities, and presently still unrecognized under Indonesian law.

The recognition and establishment of community forest management through ‘Village’ and ‘Plantation forest’ schemes, especially small-holder rubber plantations, will ensure higher security and control by local and indigenous peoples, as well as more efficient and equitable use of state forest land. While the initial area is limited in size compared overall customary forestland in Kutai Barat, these experiences are critical to show alternatives that can work on the ground for forests and people. They can also serve as building blocks and learning experiences for national REDD+, supporting commitments by the Indonesia REDD+ Task Force to include community forestry and rights in the development of REDD+.

Source: Zulfira Warta and Arif Data Kusuma, WWF-Indonesia

4. How is tenure reflected in REDD+ frameworks?

Awareness of the importance of tenure issues has made them a focus of advocacy among indigenous and civil society organizations in relation to the Climate Convention and donor initiatives. The UNFCCC Cancun Agreement, Appendix 1 contains the following related safeguards:

(c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;

(d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities

The REDD+ Social and Environmental Standards (SES) – a set of voluntary standards for government-led programs, developed through a multi-stakeholder process – give substantial attention to land and resource rights (REDD+ SES, 2010):

- *Principle 1: Rights to lands, territories and resources are recognized and respected by the REDD+ program*
- *1.2 The REDD+ program recognizes and respects both statutory and customary rights to lands, territories and resources ...*
- *1.5 ... carbon rights... are based on the customary and statutory rights to lands, territories and resources that generated the greenhouse gas emissions reductions and removals*

Further wording is found in the evolving principles and standards of major REDD+ donor initiatives, such as UN-REDD's Social and Environmental Principles and Criteria v3:

- *Principle 2 – Respect and protect stakeholder rights, including human rights, statutory and customary rights, and collective rights*
- *Criterion 7 – Respect and promote the recognition and exercise of equitable land tenure and carbon rights by indigenous peoples and other local communities*

The UN-REDD+ and Forest Carbon Partnership Facility (FCPF) *Guidelines on Stakeholder Engagement in REDD+ Readiness* also call for a special emphasis on issues of land tenure, resource use rights and property rights. Principle “e” includes the statement that:

- clarifying and ensuring their rights to land and carbon assets, including community (collective) rights, in conjunction with the broader array of indigenous peoples' rights as defined in applicable international obligations, and introducing better access to and control over the resources will be critical priorities for REDD+ formulation and implementation (FCPF and UN-REDD 2012, 5).

Donor initiatives have provided some guidance on taking tenure issues into account in proposals for readiness activities. FCPF's template for the preparation of Readiness Preparation Proposals (RPPs), for example, includes land tenure and resource rights issues as part of a broader assessment of land use, forest policy and governance matters (FCPF 2011). Countries are encouraged to identify “Who owns the carbon” and whether there is a “relationship between carbon ownership and land tenure” (ibid, 19).

These international REDD+ frameworks provide important tools for support to tenure recognition processes, and are also being taken up in a number of national frameworks. At the same time, existing evaluation of REDD+ readiness preparation processes still indicate insufficient, and generally underfunded, attention to tenure matters in practice (Davis et al. 2008; Dooley et al. 2008).

5. What is the current status and what are trends in recognition of community tenure?

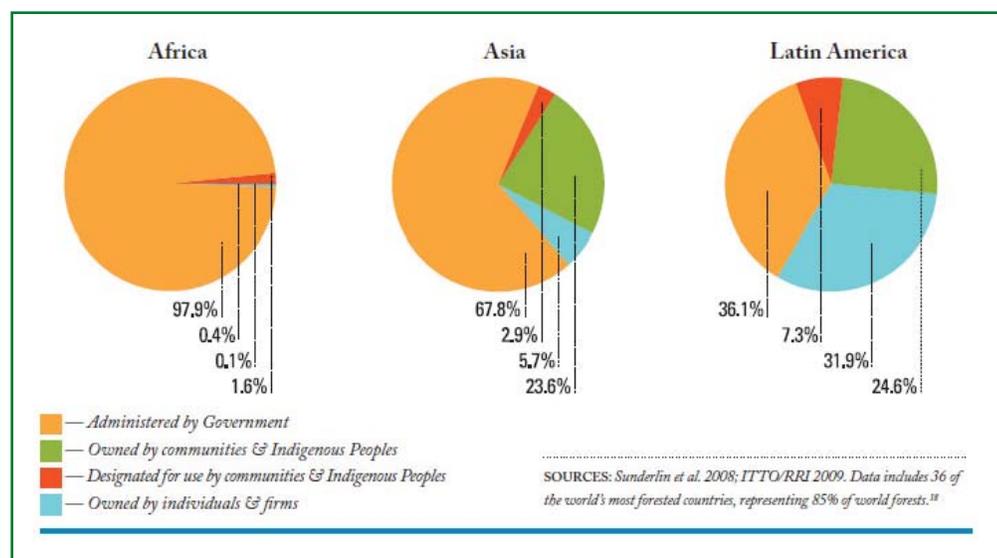
The tenure risks and opportunities generated by REDD+ initiatives occur within particular global contexts of tenure challenges and trends. In many tropical countries, forestlands are primarily owned and controlled by states. This situation reflects a general historical process of expropriation of lands under colonial regimes, despite underlying customary rights, which was often maintained by post-colonial governments. As a result, tenure arrangements in many forest areas that could potentially contribute to REDD+ remain contested or simply unclear. Liz Alden Wiley estimates that between 1 and 2 billion people globally still live without adequate recognition of their indigenous, informal or customary rights (Alden Wiley 2008).

However, while states are still primary owners, the last two to three decades have seen a gradual shift in forest tenure from states to indigenous peoples, forest communities, individuals and enterprises (Hatcher and Bailey, 2011). According to studies by the Rights and Resources Initiative (RRI 2011), community ownership and administration doubled between 1985 and 2000 and the rate of recognition averaged about 5% per year between 2002 and 2008. This trend has been characterized as a “tenure transition” of declining state ownership and increasing devolution to communities, individuals and enterprises (Sunderlin, Hatcher and Liddle 2008). Recent figures covering 85% of the world’s tropical forest area across 30 countries (Hatcher and Bailey 2011, 13) show that:

- The absolute area of public forest land administered by government has decreased from 1286 million hectares (Mha) in 2002 to 1094 Mha in 2008
- The absolute area of forest designated for use by communities and indigenous groups in these countries has increased from 43 Mha in 2002 to 71 Mha in 2008 (an increase of 66%).
- The absolute area of private community and indigenous land in these countries has increased from 248 Mha in 2002 to 303 Mha in 2008 (an increase of 22%).
- The absolute area of forest land owned by individuals and firms in these countries has increased from 100 Mha in 2002 to 222 Mha in 2008 (an increase of 122%).

These global trends collapse significant regional variations, as the following Figure 1 illustrates.

Figure 1: Forest tenure by region, 2010



Source: www.rightsandresources.org/pages.php?id=444

According to recent figures, 98 % of forest is under government ownership in Africa, 68 % in the Asia-Pacific and 33 % in Latin America (Hatcher and Bailey 2011, 16). In sub-Saharan Africa, only 10% of lands are subject to formal entitlements (mainly in South Africa), much of the rest is covered by customary tenure arrangements (Alden Wiley 2011b). Yet, only the village land areas of mainland Tanzania (60 million ha), family lands of Ghana (18 million ha) and a fragment of the community areas in Mozambique (7 million ha) are today formally recognized (Alden Wiley 2011a, 3).

Such variations in statutory rights ultimately shape the extent to which indigenous peoples and local communities can take part in, influence and benefit from REDD+. The tenure transition documented by RRI and others demonstrates that resolving tenure issues is possible, and that communities are increasingly key authorities for forest management approaches like REDD+. At the same time, much remains to be done. In addition, as highlighted in the next section, recognition processes carry their own risks, and can formalize weaker or stronger forms of tenure rights – with implications for the equity and effectiveness of REDD+.

6. What are some experiences of community tenure recognition?

Around the world formal recognition of community tenure varies considerably from relatively secure communal property titles to mosaics of individual smallholder titles with limited or no rights over surrounding forest resources. It may range from full ownership over lands and resources to limited use rights.

Recognizing community tenure and rights is here understood as the “process by which central and provincial governments cede claims of forest ownership and management rights to those communities and households that have historically used and occupied forested lands” (Hatcher 2009, 4). For several decades, tenure reforms often involved recognizing and settling individual household titles due to biased approaches against collective and other forms of customary tenure. Problems associated with these approaches included tendencies to transform, reduce or extinguish customary rights, favor local elites and even ease external access to communal forestlands. Complex, mobile livelihoods systems such as shifting cultivation, hunting-gathering and nomadic pastoralism have been especially impacted by such approaches (Chatty and Colchester 2002; FAO 2011, 25). The presence of overlapping and competing customary relationships within and between communities has often meant that questions about who gains and who loses from the resulting tenure systems are at the heart of understanding tenure and equity.

Contemporary tenure approaches have increasingly moved away from one-size-fits-all reform packages for community tenure, but still often contain significant limitations in the “depth” of rights (Almeida and Hatcher 2011; RRI 2012). Tenure instruments may take different forms depending on specific needs, claims, institutional conditions and national policy frameworks. Forms of recognition of community tenure may be differentiated in terms of:

- whether the recognized rights are individual or collective
- the areas of lands recognized – e.g., limited to immediate settlements and fields or extending across broader areas used for hunting, gathering and other activities
- which among the “bundle of rights” are recognized – for example, whether communities have rights of exclusion or only use rights
- the range of resources or uses covered by the tenure instrument – for example, lands v the forests on them, non-timber v timber uses
- the legal security of the tenure right – for example, whether recognized in a countries’ constitution, under legislation, or through a decree or administrative measure

Two significant approaches to recognition of community tenure that have taken shape over the last three to four decades are the formal demarcation and recognition of **customary collective rights of indigenous peoples**, and **devolution of management rights** to local communities (Lindsay 1998, Anderson 2011) through various forms of community-based natural resource management, especially community forestry in the context of REDD+.

Recognition of *customary rights of indigenous peoples* has taken a range of forms within and across the regions and countries where it has been most prominent (such as in Latin America and the Pacific). At the same time, these share some common elements of recognition of rights as collective rights, having a basis in customary relationships to lands, territories and resources, with lands held in perpetuity and relatively strong legal protections, along with relatively inclusive rights to natural resources within lands. As highlighted in discussions regarding an American Declaration on the Rights of Indigenous Peoples the concept of indigenous territorial rights is understood (with reference to the Americas) to “encompass a wider and different concept, that relates to the collective right to survival as an organized people, with control of their habitat as a necessary condition for the reproduction of their culture, and for their own development, or as Indigenous experts prefer, for carrying ahead “their plans for life” (“planes de vida”) and their political and social institutions” (OAS 2003). Despite basic commonalities, it is important to note that specific legal protections for customary rights vary significantly, even within each region. Roldan (2004), for example, identifies a set of key characteristics of security of indigenous land tenure in Latin America and finds significant variations in the extent to which they are fulfilled even in countries considered to have superior legal frameworks for indigenous land tenure.

Box 4: Key characteristics determining degree of security and authority exercised by indigenous peoples over their lands

- Land tenure regime (e.g., ownership or use rights)
- Recognition of land in a form that corresponds to the concept of an indigenous territory as defined in ILO 169.
- Rights granted over natural resources within lands
- The degree of security of the land title
- Degree of autonomy accorded to indigenous groups for management and ability to use traditional legal and justice systems
- Legal recourse for defense of rights

Source: Roldan Ortega, Roque. 2004. *Models for Recognizing Indigenous Land Rights in Latin America*. Washington, DC: The World Bank Environment Department.

Devolution of management rights for community-based or collaborative management of natural resources, gained prominence with community forestry in the 1970s (Arnold 2001). In these systems, the “bundle of rights” tends to be more limited – such as to access, use and management or co-management (with or without rights of exclusion) – it may be for limited periods of time (e.g., 25 year leases), and is often limited to a specific resource (forests, wildlife) rather than taking a more integrated or holistic approach. Here again there is substantial variation, with tenure rights taking stronger and weaker forms even within the same country, as in Tanzania (see Box 5).

Box 5: Differences between Community-based Forest Management and Joint Forest Management in Tanzania

There are two main approaches to Participatory Forest Management in Tanzania:

- Joint Forest Management (JFM) – typically undertaken in forest reserves through co-management between the forest owner (usually the government) and local communities
- Community-based Forest Management (CBFM) – undertaken on village lands, by local communities who take on full ownership and management rights and responsibilities

Of the two models of PFM being promoted in Tanzania, CBFM appears to be the most effective in improving forest condition. Many studies point to the fact that when rights and responsibilities are fully devolved (as under CBFM), incentives appear to be sufficient for communities to invest in forest restoration and long term management. The evidence that JFM improves results in improved forest condition appears to be mixed. The restrictive management rules in protection forests, and lack of clarity regarding the sharing of management benefits in production forests has also limited opportunities for JFM to deliver long term and tangible benefits to poor families.

Source: Tom Blomley and Said Iddi, September 2009. *Participatory Forest Management in Tanzania: 1993 – 2009. Lessons learned and experiences to date.*

A key overarching point from these experiences is that community tenure may be formally recognized in **weaker or stronger forms**, which have implications both for rights and for the effectiveness of land and forest stewardship. Therefore, it is important to give specific attention to both risks and opportunities that may be associated with the political space for formalization processes opened by REDD+ initiatives. Efforts to clarify tenure entail risks of individualizing collective forms of tenure, over-simplification (excluding rights of some in overlapping systems), undermining traditional institutions and/or creating imbalances in costs and benefits unless specific measures are included to address these risks. With the pressure to ensure tenure clarity, there is also a risk of tenure changes being rushed to facilitate REDD+ implementation (Somerville 2011, 9), and a related danger that project-level fixes could be preferred over structural change (Hatcher 2009, 11). Forest dependent communities, or marginal segments within them, risk losing out in the process unless due attention is paid to their distinct needs and rights. Knowledge of key elements of equitable and effective tenure systems, relevant to REDD+, may guard against these risks and contribute to effectively resolving outstanding community tenure concerns, providing a foundation for community-based approaches to REDD+.

An important implication for tenure reform is that trying to “fix” tenure too quickly can lead to the exclusion of people with previously recognized rights of access and use and can limit the opportunities for negotiated outcomes covering the rights of all right-holders. This may be a particular threat in the preparations for REDD+ (FAO 2011, 25).

7. What are key elements of effective and equitable tenure systems, with reference to REDD+?

In light of the discussion above regarding the potential risks as well as opportunities of tenure recognition processes in REDD+ contexts, this section draws on experience and lessons from tenure reforms to identify a set of key elements for effective and equitable tenure systems, in relation to both:

- i) The substance of legal tenure instruments, and
- ii) Supporting institutions and governance necessary to realize rights in practice

Both are addressed in light of recognition that formalization of rights is only one step in a longer process involving actual delineation, titling and putting in place effective management and defense of land and resource rights.

The identification of the following key elements is informed by two main sets of considerations and principles – those of rights-based approaches, and those of effective forest management. **Rights-based approaches** refer to international development and conservation approaches that are specifically grounded in, and seek to contribute to the realization of human rights (Springer and Campese 2011; Oxfam and CARE 2008). In the case of tenure, a rights-based approach takes a holistic approach and is grounded in a broad range of statutory and customary tenure rights. It builds, for example, on the right to property as defined in the UN Declaration on Human Rights, and in regional rights instruments in Africa, Europe and the Americas. It also builds on provisions of the *UN Declaration on the Rights of Indigenous Peoples* supporting the recognition and protection of indigenous lands, territories and resources (Articles 26 and 27), on ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries and on customary land rights independent from State recognition (Pro 169 2009, 94).

Considerations of **effective forest management** point to the importance of tenure as a critical foundation for sustainable forest management outcomes, as without secure tenure, forest users have few incentives – and often lack legal status – to invest in protecting forests. The work of Elinor Ostrom and others on governance of common pool resources, for example, demonstrates how sustainable use of these resources, including forests, depends on aspects of tenure such as clear boundaries, authority of users to make and enforce management rules, and the ability to exclude other uses (Becker and Ostrom 1995). Furthermore, studies indicate that the extent of rights is significant to forest management outcomes – in particular, operational rights of access and use having more limited impact than “collective choice” rights of management and exclusion (Agrawal and Ostrom 2001).

Substance of tenure rights

Informed by these two sets of considerations, and drawing on studies of principles and lessons for creating legal frameworks for community tenure (Lindsay 1998, Ellsworth and White 2004, FAO 2011 – see Box 6), this section outlines key elements for the substantive contents of equitable and effective tenure frameworks, whether in national legislation or other (including more local) instruments.

Box 6: Principles for reforming forest tenure

- 1) Adaptive and multi-stakeholder approach,
- 2) Tenure as part of a wider reform agenda,
- 3) Social equity,
- 4) Customary rights and systems,
- 5) Regulatory framework,
- 6) Tenure security,
- 7) Compliance procedures,
- 8) Minimum forest management standards,
- 9) Good governance,
- 10) Capacity building

Source: FAO. 2011b. *Reforming Forest Tenure: Issues, Principles and Process*. Rome, Italy: FAO Forestry Paper.

- ▶ **Clearly define rights - including carbon rights in the context of REDD+.** Experience with tenure and sustainable resource management points to the importance of ensuring clarity – about who has which “sticks” in the bundle of rights, over which resources (land, forests, carbon, subsurface resources), and falling within which boundaries. Lack of clarity about legal rights among claimants, or different legal frameworks that allocate rights in different or opposing ways, are major sources of conflict that can undermine sustainable resource management (Heil 2010). Clarity of rights also provides a foundation for determining who can take on responsibility for managing a resource, and who can benefit from it. Thus, clarity on rights is needed as a basis for local people to participate in REDD+ activities, and for others to invest confidently in them, for example through PES schemes.
- ▶ **Take a holistic approach to resource rights.** Most common property management systems take an integrated approach to management of land, forests, water and other resources. However, devolution of management rights often focuses on a particular resource (such as timber or wildlife), in some cases also adding complications of overlapping institutional and management planning requirements for different resources in the same area. One implication for REDD+ management systems is that they should take a holistic approach to forests, rather than focusing solely on management of carbon. This is in keeping with the holistic approach to stewardship of forests emphasized within indigenous territorial management systems (COICA 2011).
- ▶ **Devolve carbon rights along with other community forest rights.** Good practice emphasizes devolving carbon rights to indigenous peoples and local communities, along with other rights to forests and forest management – based on similar arguments to those concerning the recognition and/or devolution of other forest rights. In practical terms, it makes sense to assign carbon rights to those with broader rights to manage or control the forest, as the ecosystem service of sequestering carbon is inextricably linked with the sustainable management of that forest (Norton Rose 2010, 9). This may require broader reforms to address inequalities in forest access, use and management by indigenous peoples and local communities. When benefits from carbon go to those who make decisions over forest use, this also creates incentives for desired land use changes (Vhugen, Miner and Aguilar 2011, 4); clear processes for communities to benefit from carbon rights also need to be in place (REDD-Net 2011, 8). However, options to trade carbon in markets depend on a legal separation of carbon rights from rights to other forest property (see Box 7).

Box 7: Carbon rights – some legal considerations

Ideally, rights to benefit from reduced emissions should be housed within clear, state-sanctioned rights to the land and forest products. At minimum, law should give the carbon right to those with rights to decide on and receive benefits from forest management. Governments would be well advised to review and amend laws to remove or simplify restrictions on rights of those holding rights to forest products to benefit from them – this will enable communities to benefit from carbon rights. To trade carbon benefits in markets, they will need to be made separable from trees or forest property.

Source: Vhugen, Miner and Aguilar 2011. *REDD+ and Carbon Rights: Lessons from the Field*. Washington, D.C.: USAID.

- **Respect and protect customary rights.** Another key element of equitable and effective community tenure in the context of REDD+ is respect for - and protection of - customary rights. This key element derives from a broader, underlying principle of basing formal recognition on existing rights – from multiple sources, both customary and statutory. However, customary rights are highlighted here due to their particular importance and vulnerability. Since customary rights of indigenous and traditional peoples are recognized in international law, but often poorly established at national levels, promoting formal recognition of customary lands, territories and resources responds to fundamental rights concerns. This contributes, in turn, to the legitimacy and support for REDD+.

Respect and protection of customary rights also contributes in practical ways to strengthening land and resource management. Many indigenous and local communities have developed systems of traditional knowledge and management practices that are attuned to the particular environments in which they have been adapted over generations. These traditional knowledge and management systems are embedded in customary tenure and institutional arrangements and depend on these underlying customary systems for their continuation. Thus, recognition of customary systems tends to promote and enable contributions of traditional knowledge and practices; conversely, creating new systems that do not align with or disrupt customary arrangements tends to impede them.

- **Inclusively address the rights of all users.**

Most forests have multiple users and overlapping uses. At the same time, there is often considerable inequity in the extent to which rights of those users are recognized or protected. Some of these inequities arise from the power dynamics of local tenure systems themselves, where they have historically marginalized certain groups such as women and/

or indigenous peoples. Women’s rights of access, use, property and inheritance have been a long-standing equity issue in many customary and statutory systems. Other exclusions arise from tenure formalization processes that have not taken sufficient account of “messy,” overlapping dynamics of multiple use including use of different resources by different groups (men and women, agriculturalists and hunter-gathers), and in different seasons (e.g., nomadic pastoralists practicing seasonal grazing). Often these two sources of exclusion can interact, as tenure reform, land use planning and related processes take up and reinforce existing local inequities (see Box 8).

Tenure equity issues:

- Elite capture
- Marginalization of certain segments (women, pastoralists, seasonal users)
- Inter-generational inequities (e.g. youth no tenure security)
- Absentee tenure domination

In the context of REDD+, addressing the legitimate rights of all users is important both to guard against some becoming worse off, and to create incentives for all users to contribute to – or at minimum not undermine – emissions reducing activities taken up by the broader community.

Box 8: Addressing tenure equity issues in Cameroon

National land uses planning process undertaken in Cameroon to define commercial concession areas; protected areas for conservation; and community agriculture, forest, and hunting zones included community mapping and village consultation forums. However, with village leadership dominated by agricultural communities, the specific customary rights and resource use activities of indigenous forest peoples (the Baka) were not protected through these fora. Meeting the objective of securing formal recognition and protection of Baka forest rights across land uses has required further investments in activities specifically targeting the Baka, including participatory documentation and mapping of Baka forest use and strengthening of Baka representation in community-based management institutions.

Source: Springer, Jenny and Janis Alcorn. 2007. *Strengthening WWF Partnerships with Indigenous Peoples and Local Communities*. Washington, DC: WWF.

- ▶ **Ensure a positive balance between costs and benefits:** As noted above, processes for devolving forest tenure have involved different “bundles” of rights of access, use, management and exclusion. More limited devolution may reflect reluctance by government agencies to give up control, especially over valuable resources. However, one implication of more limited devolution is that the costs of increased management responsibilities may outweigh the benefits that can be derived from forest use. For example, in the case of Tanzania’s Joint Forest Management program described above (Box 5), relatively high restrictions on use and lack of clarity in the sharing of benefits from jointly-managed forests has put communities in a situation of bearing greater management costs than are compensated for by the benefits received (Blomley and Iddi 2009).

For REDD+ to be successful, it must provide incentives for participants in REDD+ initiatives to invest in emissions-reducing activities. This, in turn, requires that the benefits from the REDD+ initiative must outweigh the costs, including foregone uses (opportunity costs) and management costs. In addition, community REDD+ initiatives will likely involve new, often contractual, responsibilities on communities to manage forest carbon (Sommerville 2011, 5). Tenure instruments that do not equitably balance costs and benefits both risk creating hardship for communities operating under these obligations, and also undermine a fundamental condition for effective REDD+ results.

- ▶ **Build in rights of exclusion.** Rights to manage and exclude are a necessary foundation for effective stewardship of land and resources, including actions to reduce emissions from forests. They enable protection from encroachment by outside actors using resources in ways incompatible with local needs and management systems, and from the allocation of conflicting rights over the same lands or resources to other users. A recent study of 16 cases of forest tenure devolution (Lawry et al. 2011) found that the right of communities to regulate the use activities of non-community members was an important pre-condition to their ability to regulate their own forest use. Yet rights of exclusion are included in only 58% of national laws recognizing community tenure, as reviewed by the Rights and Resources Initiative, and are especially limited in Africa (RRI 2012 – see Figure 2).

Rights of exclusion are particularly important to REDD+, in light of the need for effective control and regulation of forest use to produce REDD+ outcomes. Without clear, enforceable rights of exclusion – especially in the areas of high deforestation pressures which are likely to be targets of REDD+ initiatives – there are risks that:

- REDD+ results will be undermined by outside actors and/or that
- Communities working under agreements to reduce deforestation will be held responsible for forest loss caused by third parties – potentially resulting in damages such as confiscations or monetary sanctions.

Figure 2: Do national laws that recognize tenure rights permit Indigenous Peoples and communities to exclude outsiders?



Source: RRI 2012.

- **Ensure rights cannot be arbitrarily or easily revoked.** One key determinant of community tenure security is the extent to which rights to lands and resources are protected from arbitrary or unfair change or cancellation (Lindsay 1998). Generally, rights are more secure when they are legally binding, and when they are adopted at higher levels of a legal framework – e.g., within a constitution or national law or policy (FAO 2011). At the same time, more informal forms of recognition of rights – such as through management plans or guidelines – can also be an important practical means to protect community tenure and land uses in situations where legal recognition is not yet in place and will require longer-term processes of change (see Box 9). One implication for REDD+ is that addressing relevant tenure issues will likely require efforts that extend beyond REDD+-specific policies or measures, to engage with national legal frameworks on land and resource tenure.

Box 9: Community land use planning in DRC

In the Democratic Republic of Congo, where most land is held by the State, significant practical authority over allocation and use of land and natural resources remains in the hands of traditional chiefs. In the Lac Tumba region of DRC (Bandundu and Equateur provinces), WWF has worked with communities at the village (or *terroir*) level – the level of authority of traditional chiefs – to conduct land-use planning in approximately 135 terroirs, reflecting community visions and priorities for management and use of village land and natural resources. WWF and community partners have also sought endorsement for community management committees and plans at higher administrative levels, including at the provincial level. This endorsement helps to protect the land use plans developed by communities, by establishing communities as legal entities and securing formal recognition of local land uses in relation, for example, to other development plans or commercial interests.

Source: Serge Darroze, WWF-DRC

- ▶ **Secure rights for a time horizon long enough for people to receive benefits.** Tenure instruments should take account of the timeframe needed for users to be able to benefit from investments in the resource (IFPRI 2004). This will create incentives for resource managers to bring a longer-term perspective to resource management, rather than being oriented towards short-term benefits due to insecurity over longer term access. Considerations of time horizon are particularly important in the context of REDD+, as the permanence of emissions reductions results will depend on long-term investments and incentives.

Supporting institutions and governance

New statutory rights do not automatically turn into rights that communities can exercise and benefit from. As Larson (2010, 3) points out: “Though reforms on paper are intended to increase local rights or tenure security, reforms in practice have faced serious challenges. These include the implementation of rights, the defense of those rights from ongoing competition and the construction of the institutions necessary to exercise those rights, obtain benefits and distribute benefits equitably.”

Box 10: Common tenure reform challenges

(1) inadequate enforcement and implementation of reforms; (2) lack of progress on rights that complement forest tenure reform; (3) government preference for industrial concessions and conservation over people; (4) competition within and among forest communities; and (5) weak performance of government in advancing reforms.

Source: Sunderlin, William, Jeffrey Hatcher and Megan Liddle. 2008. *From Exclusion To Ownership? Challenges and Opportunities in Advancing Forest Tenure Reform*. Washington D.C.: Rights and Resources Initiative.

Moving from statutory rights to the effective realization of rights, associated responsibilities and benefits requires that supportive institutional and governance frameworks be in place at multiple levels (Cronkelton, Bray and Medina 2011). Key elements include:

- ▶ **Supportive state institutions and governance.** Even after rights receive legal recognition, ongoing support from state institutions is needed for actual titling and demarcation processes, which have often lagged considerably behind enactment of legal reforms. In addition, government support is needed for the ongoing defense of boundaries, which communities often do not have sufficient mandate or capacity to enforce themselves. The picture is complicated by the fact that states themselves are often key competitors for lands and resources, and may thus have limited or conflicting interests with regard to the implementation and defense of rights (Larson 2010; Heil 2010). In general, tenure reforms involve shifts in the roles, responsibilities and power of state institutions as they relate to communities, which may need support and encouragement through capacity-building, new incentives and monitoring.
- ▶ **Empowered and effective community institutions:** As with governments, tenure reforms entail new responsibilities and capacities on the part of community institutions. Therefore, lessons from tenure reforms emphasize the importance of providing complementary support for effective community-based management and decision-making institutions. Strong local institutions are needed to ensure that communities are able to defend their rights, for example by having voice and influence in relation to governments and other actors. Effective community-based management institutions are also needed to ensure that long-term benefits are realized from sound management of natural resources. Finally, communities must be able to equitably distribute benefits, so it is not only those most able to take advantage of new opportunities that benefit from them (“elite capture”).
- ▶ **Enabling – not only enforcing – regulations and procedures:** Lessons from experience with tenure reforms have highlighted that changes to associated regulatory frameworks are also needed to ensure that they are not only enforcing but also enabling of community-based natural resource management (FAO 2011). This points, for example, to the need to minimize cumbersome

requirements for processes such as management planning and obtaining permits and licenses – all of which work against the intentions of devolution by limiting decision-making power (ibid). Requirements for organizational development should also take into account existing community institutions in order to avoid overlaps and competition (Larson 2010, 6).

- **Broader systems of rights.** Tenure rights do not exist in a vacuum and depend for their implementation and defense on the presence of broader systems of rights. These include basic rights of individual citizenship and/or recognition as peoples, as well as rights to participation in decision-making about matters affecting community tenure, rights to consultation and free, prior, informed consent to developments affecting land and resource rights, and rights of redress where tenure rights are infringed (Hatcher and Bailey 2011, 22).

8. Opportunities for supporting strengthening of community tenure in relation to REDD

Given the diversity of community tenure issues, there are multiple entry points for REDD+ initiatives to contribute, and a long-term adaptive approach is generally required. Assessing opportunities to strengthen community tenure security early on in a REDD+ process increases the chances that the necessary political, technical and financial support can be leveraged to address tenure needs.

Depending on the context, community tenure needs may include establishing or clarifying statutory rights, reforming existing forestland policies or implementing existing legislation. Each of these needs implies a different set of strategies. Policy and legislative reform may involve documentation and advocacy work (including on carbon rights), whereas resolving outstanding forestland claims (titling, extension claims, contested lands) may involve support to mapping and conflict resolution. In most situations, some combination of policy change and implementation support is likely to be expected. Given the substantial time requirements at stake, both short term, interim measures to resolve high priority tenure matters and a long-term process to resolve wider tenure concerns are often necessary.

Conducting thorough tenure assessments as part of national REDD+ planning

Countries developing REDD+ programs increasingly undertake diagnosis and assessment work on tenure issues. Current donor “good practice” involves describing “current legislation pertaining to who owns the rights to carbon, and land tenure where relevant” when developing REDD+ implementation measures (FCPF 2011, 42) and monitoring tenure issues (ibid, 61). These donor frameworks offer a critical window of opportunity to mainstream community tenure concerns in national planning processes. In some countries, as Indonesia and Guyana, specific legislative reviews of community tenure have been undertaken as part of REDD+ readiness (FCPF 2010, 20).

Box 11: FCPF Readiness Preparation Proposal format on tenure

“This analysis should provide data on 1) land tenure (differentiated if possible by gender and ethnicity), land use and related trends; and 2) important insights into lessons learned, challenges, and opportunities to overcome those challenges.”

“Considerations in this assessment include,... pertinent laws, policies, and issues surrounding land tenure and resource rights, and traditional land use of indigenous people, extent of titled and untitled indigenous lands, indigenous claims for additional land “extensions;” and process of land title demarcations;”

A later section on implementation lists the following points:

“Who owns or uses the forest under statutory or customary law? Is there regulatory or legal clarity on and who owns carbon benefits generated by REDD-plus activities? Is there a relationship between carbon ownership and land tenure? How would any land tenure, or carbon ownership, issues that arise be resolved or mediated?”

Source: FCPF. 2011. *Readiness Preparation Proposal (R-PP), Version 6 Working Draft.*

Core knowledge challenges in relation to REDD+ and community tenure include:

- Identifying relevant national and international rights standards, such as the collective rights of indigenous peoples, to establish an overarching normative framework for REDD+ design and implementation in relation to community tenure
- Securing reliable data about existing community tenure practices and rights (both statutory and customary lands and resources) in all forest areas potentially addressed by REDD+ initiatives.
- Identifying rights holders, recognizing the diversity of rights-holders, and taking into account equity concerns
- Inventorying and mapping forest tenure rights – including securing knowledge about overlapping, conflictive or contested community tenure arrangements
- Identifying structural gaps within existing statutory tenure systems, along with implementation and reform needs (see Section 7)
- Identifying reform opportunities and practical steps that can contribute to resolving tenure matters as part of the REDD+ process
- Understanding the political context of tenure reform

Getting a grasp of community tenure institutions and rights-holders are important building blocks in determining the adequacy of existing statutory tenure systems and identifying reform opportunities. Understanding the make-up of duty-bearers, statutory arrangements and their implementation are the complementary starting points for the design of tenure-related actions. Research may identify longstanding issues of unrecognized customary tenure, or may point to new tenure challenges such as how to link community and carbon rights emerging in the context of REDD+.

The general time pressure on REDD+ planning processes presents a distinct challenge for tenure assessments, especially for participatory and “bottom up” assessments in line with rights-based approaches. A key challenge concerns how a REDD+ process, within the window of opportunity presented by a planning process, can understand which short and long-term measures need to be addressed at which points in order to ensure that community tenure security is not negatively affected and that opportunities to address tenure concerns are not missed.

Here, consultations offer an important tool to generate a preliminary diagnosis of diverse tenure systems and issues, such as unresolved claims, title extensions or contested rights. While they may not offer a comprehensive description, properly implemented consultations can indicate the socially most significant tenure issues as perceived by rights-holders and stakeholders.

Rapid tenure assessments engaging national and regional representatives offer opportunities to determine major community tenure challenges, and possibly put in practice fast-track mechanisms to resolve key bottlenecks as part of readiness processes. Rapid assessments may involve multidisciplinary teams composed of members with technical specialization (community land administration and planning) along with community representatives, anthropologists and forest planners. Tools such as the Rapid Tenure Assessment Manual (Galudra et al. 2010) developed in Indonesia can offer methodological support. Adequate funding is needed to allow for both in-depth field research and consultation processes. As with reform processes themselves, tenure assessments will often need to include both short and long-term knowledge-generation strategies.

Supporting policy processes

REDD+ systems that effectively and equitably strengthen tenure security will depend on robust national legislation. Supporting relevant policy reform processes is therefore a key avenue of action to strengthen community tenure. As noted above, REDD+ processes may offer new impetus to resolve longstanding tenure challenges. Indeed, tenure policy changes generally follow major political changes or economic shifts rather than technical criteria alone (FAO 2011, 3).

Establishing statutory rights often involves a complex interplay of constitutional debates, tenure specific legislation and the wider policy environment. Resolving outstanding tenure matters may, depending on the nature of the problem, require a legal analysis of statutory and customary laws, hands-on survey-work in unmapped forest areas and/or assessment of community access to conflict resolution mechanisms and processes.

Because tenure reform processes are very long term, it is often necessary to pursue both shorter-term strategies that increase effective tenure security on the ground, in combination with longer term strategies to resolve broader tenure inequalities. Short-term strategies often involve supporting communities to negotiate, assert and secure recognition of their land uses from other key actors that maintain statutory rights to the lands and resources in question. While increasing the practical security of community tenure, short-term strategies also carry limitations – such as risks of revocation and limited access to recourse mechanisms – that can only be effectively addressed through longer term policy processes.

Building implementation into REDD+ strategies

Even once recognized and clarified, protection, implementation and enforcement of community tenure legislation is often scattered. Reasonable tenure policies on paper may be in place, but contradicted by others or simply not implemented by poorly-funded agencies in charge of forest land administration. For example, 10 years after adopting an innovative land law on the registration of community lands in Mozambique, only some 2.5 % of communities had their lands registered (Alden Wiley 2011a). Studies of experience from Latin America highlight multiple obstacles to implementation, including conflicts with other claimants, lack of clear definitions by the state, local authorities and governance institutions, overlapping regimes, inadequate resource management systems and limited access to markets (Larson et al. 2009; Larson 2010). Building security thus involves a comprehensive and reiterative implementation process, which addresses not only the legislative framework, but also broader social, economic and political dynamics. Potential contributions from REDD+ processes include:

Securing adequate resources for tenure security and titling programs. State resources for community forest tenure security have historically been very limited or scarce. Large parts of indigenous forestland titling efforts in Latin America have depended on international financing and technical support in order to ensure adequate resources. While direct costs linked to territorial demarcation, registration and titling are generally substantially lower than resources required for individual land-titling, public budgets are often deficient. Based on a comparative review, the global average direct costs for the recognition of community tenure amounted to \$3.31/ha, whereas the average cost of the titling of household plots was \$23.16/ha (Hatcher 2009, 7).

Making sure that adequate resources and budgets for titling work are integrated into REDD+ initiatives and channeled to the areas most needed is a critical priority. Effective titling is rarely about simply “rolling-out” a well-established model, and may typically involve a range of unforeseen activities and costs. Community tenure in practice inevitably entails addressing a series of challenges across the spectrum of forest governance, which may be specific to community tenure or reflect broader dynamics such as dysfunction within land use planning or titling agencies (Brockhaus et al. 2011, 5; Transparency International and FAO 2011). The full process should be taken into account in defining resource needs.

Recognizing, mapping and securing statutory rights to community lands and resources. There is now wide-ranging experience in community land and resource use mapping across all continents. Legal requirements and opportunities will differ between countries, yet the last few decades have seen an explosion of participatory or community-driven mapping efforts to document and recognize community tenure practices. In some countries, representative organizations and support NGOs may have fairly clear ideas about the size and range of unrecognized, contested or fragile community tenure situations. In cases where land is either non-titled or considered state property with few other claimants, relatively quick advances made be made to secure community tenure security through locally agreed upon models. In other cases, overlapping claims may result in protracted legal processes, or opinions may diverge regarding appropriate tenure models.

Reworking community tenure within other titles. Whereas mapping and titling of contiguous forest areas is relatively straightforward, if at times politically, culturally and technically challenging, clarifying multiple, layered tenure arrangements and diverse rights holders are arguably even more so. There are numerous examples of unilateral property regimes imposing boundaries and excluding other tenure holders. The challenge of addressing the grazing and water rights of pastoralists on the private lands of third parties or within protected areas is a good example. There are other cases involving differential rights to certain trees, non-timber products or seasonally dependent rights easily foregone or even extinguished upon “clarifying” tenure.

Box 12: Promoting Community Forest Management within a Production Forest Concession

Batu Manjang is a Dayak village situated in Kutai Barat, East Kalimantan, Indonesia overlapped by a 60.000 ha production forest concession. An area of 450 ha near the village has been set aside by community elders for protection purposes for a long time. The area provides the community with clean water, and various non timber forest products such as rattan, medicinal plants and traditional foods. As community tenure systems remain unrecognized under state law, WWF supports dialogues with the forest concession holder to ensure that customary tenure practices are recognized in practice through concession management plans. Activities include mapping, communication and agreement building.

Source: Arif Data Kusuma and Zulfira Warta, WWF-Indonesia

Facilitating equitable decision-making and agreements. REDD+ and other forest carbon arrangements entail increasing engagement with government agencies and project developers. Given such scenarios, REDD+ policies allowing for equitable decision-making, free, prior, informed consent and legislative mechanisms that enable communities to establish clear and equitable agreements with outside actors will be critical to success.

9. Conclusion

This paper has argued for far more explicit and central attention to community tenure in the context of REDD+ processes. The growing consensus around the importance of addressing community tenure and rights concerns articulated in global decisions and guidance documents needs to be matched through national policy and implementation efforts with the required scale, timing, magnitude and funding. This paper recommends that stakeholders engage in a concerted effort to make use of the REDD+ window of opportunity to consolidate community tenure concerns, not as a necessary safeguard add-on, but as a central component of REDD+ preparations and strategies.

In these efforts, significant experience and lessons can be drawn from broader efforts over several decades to strengthen the security of indigenous peoples’ and local communities’ tenure over forests and other lands and natural resources. These experiences, along with emerging REDD+ efforts, point to:

- Key substantive elements of tenure frameworks that can support equitable and effective community-based forest management, relevant to REDD+,
- Institutional and governance needs to enable the realization of benefits from tenure rights, and
- Opportunities and needs to support strengthening of community tenure as part of REDD+ processes.

While not a panacea, increased security of community forest tenure provides a critical foundation for many REDD+ climate, biodiversity and livelihoods outcomes. Secure tenure contributes to more sustainable stewardship of forests in the context of REDD+, helps safeguard against displacement risks, and influences how communities may participate REDD+ activities and associated benefits. Therefore, recognizing and respecting community tenure rights is fundamental to equitable and effective REDD+ initiatives.

References

- Agrawal, Arun and Elinor Ostrom. 2001. "Collective Action, Property Rights and Devolution of Forest and Protected Area Management." In *Collective Action, Property Rights and Devolution of Natural Resource Management: Exchange of Knowledge and Implications for Policy*, edited by Ruth Meinzen-Dick, Anna Knox and Monica Di Gregorio. Feldafing: German Foundation for International Development.
- Alden Wiley, Liz. 2008. *Whose Land Is It? Commons and Conflict States: Why the Ownership of the Commons Matters in Making and Keeping Peace*. Washington, DC: Rights and Resources Initiative.
- Alden Wiley, Liz. 2011a. *Customary Land Tenure in the Modern World, Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa - Brief #1 of 5*. Washington, DC: Rights and Resources Initiative.
- Alden Wiley, Liz. 2011b. "'The Law is to Blame': The Vulnerable Status of Common Property Rights in Sub-Saharan Africa." *Development and Change*, 42(3), 733-757.
- Almeida, Fernanda and Jeffrey Hatcher. 2011. *What Rights? Measuring the Depth of Indigenous Peoples and Community Forest Tenure*. Washington, DC: Rights and Resources Initiative.
- Anderson, Kirsten Ewers. 2011. *Communal Tenure and the Governance of Common Property Resources in Asia*. Rome: FAO.
- Arnold, J.E.M. 2001. *25 Years of Community Forestry*. Rome: FAO.
- Blomley, Tom and Said Iddi. 2009. *Participatory Forest Management in Tanzania: 1993 – 2009. Lessons Learned and Experiences to Date*. Tanzania: Forest and Beekeeping Division.
- Brockhaus, Maria, Krystof Obidzinski, Ahmad Dermawan, Yves Laumonier and Cecilia Luttrell. 2011. *An Overview of Forest and Land Allocation Policies in Indonesia: Is the Current Framework Sufficient to Meet the Needs of REDD+?* Bogor: Forest Policy and Economics.
- Campese, Jessica. 2011. *Integrating REDD+ Social and Environmental Safeguards and Standards in Tanzania, TFCG Technical Report 32*. Dar es Salaam: MJUMITA and the Tanzania Forest Conservation Group.
- Chatty, Dawn, and Marcus Colchester, eds. 2002. *Conservation and mobile indigenous peoples: displacement, forced settlement and sustainable development*. Oxford: Berghan.
- Climate, Community & Biodiversity Alliance (CCBA) and CARE International. 2010. *REDD+ Social and Environmental Standards*.
- COICA 2011. *Indigenous REDD+: Full Life Territories to Cool the Planet*. Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA).
- Cotula, Lorenzo and James Mayers. 2009. *Tenure in REDD+: Start-Point or Afterthought?* London: IIED.
- Cronkleton, Peter, David Barton Bray and Gabriel Medina. 2011. *Community Forest Management and the Emergence of Multi-Scale Governance Institutions: Lessons for REDD+ Development from Mexico, Brazil and Bolivia*. *Forests* 2011, 2: 451-473.
- Davis, Crystal, Florence Daviet, Smita Nakhoda and Alice Thuault. 2008. *A Review of 25 Readiness Plan ideas: Notes from the World Bank Forest Carbon Partnership Facility, Working Paper*. Washington: WRI.
- Dooley, Kate, Tom Griffiths, Helen Leake and Saskia Ozinga. 2008. *Cutting Corners: World Bank's Forest and Carbon Fund Fails Forests and Peoples*. United Kingdom: FERN and Forest Peoples Programme.
- Ellsworth, Lynn and Andy White. 2004. *Deeper Roots: Strengthening Community Tenure Security and Community Livelihoods*. New York: Ford Foundation.
- Espinoza Llanos, Roberto and Conrad Feather. 2011. *The Reality of REDD+ in Peru: Between Theory and Practice*. Lima, Peru: FPP, CARE, FENEMAD, AIDSESEP.
- FAO. 2011a. *Consolidated Changes to the First Draft of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.
- FAO. 2011b. *Reforming Forest Tenure: Issues, Principles and Process*. Rome, Italy: FAO Forestry Paper.

- FCPF. 2010. *Harvesting Knowledge on REDD-plus: Early Lessons from the FCPF Initiative and Beyond*. Washington, DC: FCPF Working Paper.
- FCPF. 2011. *Readiness Preparation Proposal (R-PP), Version 6 Working Draft*.
- FCPF and UN-REDD+. 2012. *Guidelines on Stakeholder Engagement in REDD+ Readiness: With a Focus on the Participation of Indigenous Peoples and Other Forest-dependent Communities*. (April 20, 2012 version).
- Feiring, Birgitte. 2009. *Indigenous and Tribal Peoples Rights in Practice: A Guide to ILO Convention 169*. Geneva: International Labour Organization.
- Fitzpatrick, Daniel. 2005. 'Best Practice' Options for the Legal Recognition of Customary Tenure. *Development and Change* 36(3).
- Fitzpatrick, Daniel and McWilliam, Andrew. 'Waiting for Law: Land Custom and Legal Regulation in Timor-Leste', *Development Bulletin*, 68.
- Freudenberger, Mark S., John Bruce, Beatrice Mawalma, Paul de Witt and Karol Boudreaux. 2011. *The Future of Customary Tenure: Options for Policy Makers*. In USAID issue brief: USAID.
- Forest Monitor. 2010. *Developing Community Forestry in the Democratic Republic of Congo*. Cambridge: Forest Monitor.
- Galudra G, Sirait M, Pasya G, Fay C, Suyanto, van Noordwijk M, and Pradhan U. 2010. *RaTA: A Rapid Land Tenure Assessment Manual for Identifying the Nature of Land Tenure Conflicts*. Bogor, Indonesia. World Agroforestry Centre.
- Griffiths, Tom. 2009. *Seeing REDD+: Forests, Climate Mitigation and the Rights of Indigenous Peoples and Local Communities*. United Kingdom: Forest Peoples Program.
- Hatcher, Jeffrey. 2009. Securing Tenure Rights and Reducing Emissions from Deforestation and Degradation (REDD+): Costs and Lessons Learned. *Social Development Working Papers*. Washington, DC: World Bank.
- Hatcher, Jeffrey and Luke Bailey. 2011. *Tropical Forest Tenure Assessment: Trends, Challenges, Opportunities*. Washington, DC: ITTO and RRI.
- Heil, Nora. 2010. *Possible Implications of REDD+ on Land and Forest Tenure – Exemplified by the Indonesia Case*.
- IFPRI. 2004. *Collective Action and Property Rights for Sustainable Development*. International Food Policy Research Institute.
- International Labour Organisation. 1989. *Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries*. Geneva: ILO.
- Knight, Rachel. 2010. *Statutory Recognition of Customary Land Rights in Africa: An Investigation into Best Practices for Lawmaking and Implementation*. Rome: Development Law Service, FAO Legal Office.
- Larson, Anne. 2010. "Forest tenure reform in the age of climate change: Lessons for REDD+." *Global Environmental Change* 21:540 - 549.
- Larson, Anne M., Peter Cronkleton, Deborah Barry and Pablo Pacheco. 2009. *Tenure Rights and Beyond: Community Access to Forest Resources in Latin America. Occasional Paper no. 50*. Bogor, Indonesia: CIFOR.
- Lawry, Steven, McLain, R., Swallow, B., Biedenweg, K., and M. Sommerville. 2011. *Devolution of Forest Rights and Sustainable Forest Management*. Property Rights and Resource Governance Project (PRRGP). Washington D.C.: USAID.
- Lindsay, Jonathan. 1998. *Creating a Legal Framework for Community-based Management: Principles and Dilemmas*. Rome: FAO.
- Moss, Nicholas and Ruth Nussbaum. 2011. *A Review of Three REDD+ Safeguard Initiatives*. Washington D.C.: FCPF.
- Meinzen-Dick, Ruth Suseela and Monica Di Gregorio (Eds.). 2004. *Collective Action and Property Rights for Sustainable Development*. Washington, DC: IFPRI.
- Norton Rose LLP. 2010. *Forest Carbon Rights in REDD+ Countries: A Snapshot of Africa*.

- Organization of the American States. 2003. Meeting of the Working Group on the Fifth Section of the Draft American Declaration on the Rights of Indigenous Peoples, with Special Emphasis on “Traditional Forms of Ownership and Cultural Survival, Right to Land and Territories.” Washington, DC.
- Oxfam America and CARE USA 2008. *Rights-based Approaches: Learning Project*. Oxfam Publishing.
- REDD-Net. 2011. “Carbon Rights and REDD+.” REDD-Net Bulletin(3).
- REDD+ SES 2010. *REDD+ Social and Environmental Standards v1*.
- Roldan Ortega, Roque. 2004. Models for Recognizing Indigenous Land Rights in Latin America. Washington, DC: The World Bank Environment Department.
- RRI. 2008. *Seeing People Through the Trees: Scaling Up Efforts to Advance Rights and Address Poverty, Conflict and Climate Change*. Washington D.C.: Rights and Resources Initiative.
- RRI. 2011. *The State Of Forest Tenure Today: The Struggle to Realize, and Keep, Rights*. Washington, DC: Rights and Resources Initiative.
- RRI 2012. *Respecting Rights, Securing Development: Forest Tenure Reform since Rio 1992*. Washington, DC: Rights and Resources Initiative.
- RRI and ITTO. 2009. *Who Owns The Forests Of Africa? An Introduction to the Forest Tenure Transition in Africa, 2002-2008*.
- Safitri et al 2011. Menuju Kepastian dan Keadilan Tenurial. Jakarta.
- Schlager, Edella and Elinor Ostrom. 1992. Property-Rights Regimes and Natural Resources: A Conceptual Analysis. *Land Economics*, 68(3).
- Sommerville, Matt. 2011. *Land Tenure And REDD+: Risk To Property Rights And Opportunities For Economic Growth*. Property Rights and Resource Governance Briefing Paper #11. Washington D.C.: USAID.
- Springer, Jenny and Janis Alcorn. 2007. *Strengthening WWF Partnerships with Indigenous Peoples and Local Communities*. Washington, DC: WWF.
- Springer, Jenny and Jessica Campese 2011. *Human Rights and Conservation: Key Issues and Contexts*. Conservation Initiative on Human Rights.
- Sunderlin, William, Jeffrey Hatcher and Megan Liddle. 2008. *From Exclusion To Ownership? Challenges And Opportunities In Advancing Forest Tenure Reform*. Washington D.C.: Rights and Resources Initiative.
- Sunderlin, William, Anne Larson and Peter Cronkleton. 2009. *Forest Tenure Rights And REDD+: From Inertia to Policy Solutions*. In *Realizing REDD +: National Strategy and Policy Options*, ed. Arild Angelsen. Bogor: CIFOR.
- Tacconi, Lucca, Mahanty, Sango, and Helen Suich. 2009. *Assessing the Livelihood Impacts of Payments for Environmental Services: Implications for Avoided Deforestation*. Buenos Aires: CFM 2009.
- Takacs, David. 2009. *Forest Carbon: Law + Property Rights*. Conservation International.
- United Nations Conference on Environment and Development. 1992. Agenda 21. Rio de Janeiro: The United Nations Program of Action from Rio.
- United Nations Framework Convention on Climate Change. 2010. *Cancun Agreements*. Cancun: UN.
- United Nations. 1992. Convention on Biological Diversity. Rio de Janeiro: UN.
- United Nations. 2007. United Nations Declaration on the Rights of Indigenous Peoples. New York City: UN.
- USAID. 2011. *Institutional Mechanisms For Sharing REDD+ Benefits*. Property Rights and Resource Governance Project (PRRGP). Washington D.C.: USAID.
- Vhugen, Darryl, Jonathan Miner and Soledad Aguilar. 2011. *REDD + and Carbon Rights*. Property Rights and Resource Governance Project (PRRGP). Washington D.C.: USAID.
- World Bank. 2010. *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods And Resources. A discussion note prepared by FAO, IFAD, UNCTAD and the World Bank Group to contribute to an ongoing global dialogue*. Washington D.C.

WWF believes the following are key to equitable and effective REDD+ initiatives:

SECURE COMMUNITY TENURE

Recognizing and respecting customary rights to forests enables more effective stewardship and will significantly influence who receives benefits from REDD+ initiatives.

FULL AND EFFECTIVE PARTICIPATION

Full and effective participation of indigenous peoples and local communities in developing, implementing and monitoring REDD+ initiatives will require investments in capacity building and inclusive decision-making processes.



EQUITABLE SHARING OF REDD+ BENEFITS

Incentives for forest communities and good governance of financial mechanisms can help ensure that REDD+ initiatives provide benefits to communities, many of whom are the historic stewards of forest resources.

FREE, PRIOR, INFORMED CONSENT

FPIC enables community rights and interests to be taken into account in REDD+ initiatives, resulting in more effective and equitable REDD+ outcomes.



Why we are here

To stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature.

www.panda.org/forestclimate

For more information:

Jenny Springer, WWF Rights and Livelihoods Program
peopleandconservation@wwfus.org

WWF Forest & Climate Initiative
forestclimate@wwf.panda.org