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POLICY BRIEF

Tenure and REDD+

Developing enabling tenure conditions for REDD+

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Key messages

1. Tenure clarity is needed to identify REDD+ stakeholders and is often necessary to establish equitable benefit-sharing mechanisms. Tenure security is also key to achieving long-term success in sustainable forest management and improved livelihoods.
2. REDD+ requires immediate action to enable quick implementation. Because national tenure reforms are often a lengthy process, both short and long-term measures may be required to address tenure needs for REDD+.
3. Recognizing and protecting customary rights of local communities and indigenous peoples through participatory mechanisms is important for the effective and equitable implementation of REDD+.
4. Inserting tenure arrangements for REDD+ in national tenure policy frameworks will attenuate potential risks associated with REDD+ activities; e.g. increased land competition and/or the exclusion of those not formally registered as rightsholders.
5. Experiences with payment for environmental services (PES) and community forest management approaches can offer useful insights into flexible tenure arrangements for REDD+, based on existing tenure rights to land, forests and natural resources.

1. Introduction

The tenure of land, forests and other natural resources has crucial implications for REDD+ goals, planning and implementation processes. Tenure is a decisive factor in the identification of stakeholders whose rights, territories and livelihoods are affected by REDD+ activities. It is important to understand the multiple and complex tenure systems at play in forest areas because these are central to establishing who to reward for contributing to REDD+ and how. Tenure is the basis upon which to create effective benefit-sharing systems. The domestic laws and policies framing forest tenure systems also play a major part in the achievement of REDD+ goals: their provisions may result in either reduced or increased deforestation. While tenure-related risks will affect the implementation of REDD+, REDD+ activities may also reduce or exacerbate land conflicts by changing the value of forests.

In this policy brief, *tenure* refers to the relationships, systems and rules that determine rights to land and forest resources. The rules define how access is granted to a range of rights, including the use, control (management and exclusion), and

transfer (selling or leasing) of tenure rights, and associated responsibilities and restraints¹. Understood in this sense, tenure greatly affects the ability and motivation of local communities to manage natural resources sustainably.

REDD+ provides an opportunity to revise outdated tenure policy and legal frameworks; to strengthen formal and customary tenure rights; and to empower local rightsholders to participate meaningfully in REDD+ decision-making and implementation. REDD+ will face challenges in achieving its goals and establishing equitable benefit-sharing systems if complex tenure realities are ignored or if implementation and enforcement mechanisms are weak and rightsholders excluded (Knox *et al.*, 2011, pp. 21-34). Other challenges may stem from the complexity of national and subnational tenure systems, power asymmetries between the government, the private sector and citizens and conflicting tenure claims. A lack of awareness at the local level and capacity gaps in tenure governance and administration could also cause difficulties².

^a: FAO

Building on this rationale, this policy brief aims to:

1. increase understanding of the tenure aspects of REDD+ readiness in the context of national tenure processes and the implementation of the Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security (Guidelines);
2. identify areas of work that should be considered in order to create enabling tenure conditions for REDD+ implementation; and
3. suggest practical recommendations, existing approaches and relevant experiences to address tenure issues related to REDD+.

The important topic of carbon rights is for the most part excluded from this publication because negotiations on climate finance are ongoing and there is currently no international agreement on whether carbon can be owned or be a tradable commodity. Carbon rights can be understood as the right to economic benefits associated with increasing carbon sequestration and/or reducing carbon emissions. However, in this policy brief, benefits do not mean only economic rewards but can, for example, take the form of improved protection of forest and resource access rights or livelihood assets.



2. The role of tenure in successful implementation of REDD+

Tenure security and tenure clarity

The REDD+ related tenure debate currently focuses on the roles that tenure clarity and security play in the implementation of REDD+ activities; in particular how they contribute to the rate of deforestation, can strengthen equitable benefit-sharing systems and improve or impede project efficiency.

Most researchers agree on the importance of addressing insecure and contested tenure rights at an early stage of REDD+ implementation (Stern, 2006; Eliasch, 2008; Westholm *et al.*, 2011; Sunderlin *et al.*, 2013). Although tenure security is not always a necessary precondition to implementing REDD+ activities, tenure insecurity could bring about land use changes that lead to deforestation and forest degradation (Scotland, 2000; Okali and Eyog-Matig, 2004; Savaresi, 2009; Hatcher, 2009).

Tenure security

Land tenure security can be described as “the certainty that a person’s rights to land will be recognized by others and protected in cases of specific challenges. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. Without security of tenure, households are significantly impaired in their ability to secure sufficient food and to enjoy sustainable rural livelihoods”. (FAO, 2002).

Land tenure security is often associated with less deforestation³. Ensuring that tenure is secure is critical because it allows individuals and communities to take into account future values in current decision-making. Most importantly, tenure security provides communities with some control over whether REDD+ will be implemented in their community and, if so, how it will affect their livelihoods⁴.

In some cases, however, tenure security has been seen to exacerbate deforestation, and tenure insecurity has also favoured the protection of forests⁵. If tenure security translates into privileged commercial access to forest lands and resources, this can lead to forest conversion (Sunderlin *et al.* in Larson *et al.*, 2013). Political and economic interests may perpetuate such practices. Awarding land to industrial concessions can reduce the amount of forest land under community control and contribute to tenure uncertainty at local level (Bolin *et al.*, 2013). The question is: tenure security for whom? Identifying optimal tenure arrangements in



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the REDD+ context will depend on a range of actors, their interests, incentives and political will.

Tenure systems and rights in REDD+ areas are often unclear (Naughton-Treves & Day eds., 2012, p. 102). Although vast forest areas are used and managed by local communities and indigenous peoples, governments officially control approximately one-third of the forest estate in Latin America, approximately two-thirds in Asia, and virtually the entire area in Africa⁶. Despite trends to recognize customary rights and a transfer of forest management rights to the local level in a few countries⁷, tenure rights to forests remain uncertain and contested (Holland *et al.*, 2013).

Clarifying tenure in the REDD+ context is a complex endeavor, partly because several rightsholders may have different rights over the same resources or share the same rights. These rights may also change over time depending on seasons and natural conditions. Primary and secondary rights may exist, and primary rights to trees may be allocated independently of primary rights to lands on which the trees grow (Knox *et al.*, 2011), so forest and tree tenure cannot be used interchangeably. The concept of a bundle of rights provides a more refined understanding

of tenure⁸, and has implications for incentivizing natural resources management.

In some cases, communities have more powerful rights than individual rightsholders, including management, exclusion and transfer rights (Schlager and Ostrom, 1992). These rights are important for the effective and sustainable management of resources in the long term. Often only the community has the authority to change rules that define rights⁹. In common property rights regimes, other rights such as access and withdrawal are the most important for ensuring livelihoods. Growing evidence indicates that the recognition of access and ownership rights of communities and indigenous people can improve forest management and conservation (Sunderlin *et al.*, 2008; Phelps *et al.*, 2010). Nevertheless, tenure clarity alone will not lead to reducing deforestation and forest degradation. Tenure must be seen in the broader socioeconomic context to understand its implications for forest management

Addressing tenure challenges in REDD+ readiness

Inadequate or insecure tenure rights increase vulnerability, hunger and poverty, and can lead to conflict and environmental degradation when competing users fight for control of these resources (FAO 2012, p. v).

Tenure clarity

The clarification of tenure under REDD+ means gaining a solid understanding of local tenure systems and how REDD+ could be implemented successfully by building on these systems. The questions of who owns, manages, uses and depends on forests, when and under what circumstances, are crucial to understanding the dynamics of the local tenure situation as a major consideration in the negotiation and design of a global REDD+ framework. (Doherty & Schroeder, 2011, p. 82)

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The concept of a bundle of rights

The concept of a bundle of rights has been used to illustrate the overlapping and multi faceted nature of tenure rights, which include:

- Rights of access (enter in the area);
- Rights of use or withdrawal (obtain / retain a product of the resource);
- Rights of management (determine the patterns regarding use, exploitation or transformation of the resource);
- Rights of exclusion (deny the access or the management to other potential users);
- Rights of alienation (sell the resource or the product of the resource).

Sources: FAO. 2002. *Land tenure and rural development. Land Tenure Studies 3*, p. 9. Rome (available at <ftp://ftp.fao.org/docrep/fao/005/y4307e/y4307e00.pdf>).

A number of countries with UN-REDD national programmes have raised concerns about tenure-related conflicts, but few have sought to analyse the nature and extent of the risk of conflict or to assess legal inconsistencies related to forest tenure¹⁰. Analysing the conflict dynamics in REDD+ countries might help understand how these could affect and be affected by REDD+ implementation, and what new risks might arise. Local and traditional dispute resolution procedures and systems can help inform the design and implementation of national strategies and mechanisms to prevent and resolve tenure disputes¹¹.

These tenure-related challenges raise several important questions for REDD+ planning and implementation:

- How can legitimate tenure rightsholders¹² be identified and empowered to participate in REDD+ decision-making processes and benefit-sharing?
- What can be done to ensure that all relevant, rightsholders are rewarded and incentivized for reducing deforestation and forest degradation?
- What role does tenure play as a driver of deforestation? Land tenure administration and policies do not necessarily always address deforestation but may, on the contrary, exacerbate forest conversion.
- What can be done to ensure that measures to address tenure are efficient and long-lasting solutions?

REDD+ readiness proposals mention existing tenure rights as a potential starting point for establishing benefit-sharing systems and point to a range of challenges, such as tenure policies that contribute to forest conversion, capacity gaps in land administration and tenure conflicts. Only about one-third of the national REDD+ readiness proposals include studies on forest tenure and slightly less than one-third propose strategies to address tenure challenges (Williams, 2013). Other countries, such as Indonesia, already have advanced definitions of which tenure rights apply in the REDD+ context.

Recommendation

Analysing the types of tenure systems, reform processes, and understanding whether indigenous and local peoples' rights are recognized and protected, is crucial to understanding what specific tenure aspects need to be addressed in the REDD+ context.

Indonesia National REDD+ strategy

The people have a constitutional right to certainty over boundaries and management rights for natural resources. Land tenure reform is an important prerequisite to create the conditions required for successful implementation of REDD+.

Source: Indonesia's national REDD strategy, 2012, p. 18.

2.1 International legal provisions informing countries' efforts to create enabling tenure conditions for REDD+

International legal frameworks and provisions

While the right to property is enshrined in the Universal Declaration of Human Rights¹³ as well as in many national constitutions, tenure rights are currently not recognized as human rights. They are, however, crucial for the realization of other rights, such as the right to a standard of living adequate for health and well-being, including food and housing^{14 15} (FAO, 2012, p. 8).

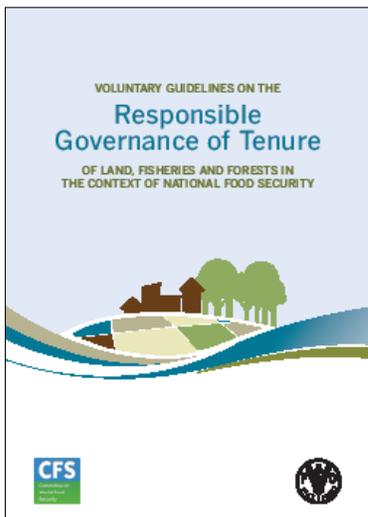
Land tenure rights have been established in the international legal framework in relation to land access for particular groups, e.g. indigenous peoples and, to a more limited extent, women. General principles in international law provide protection that relate to access to land; e.g. equality and non-discrimination in ownership and inheritance. The United Nations Declaration on the Rights of Indigenous Peoples¹⁶ (a non-legally binding instrument under international law) and the ILO Convention on Indigenous and Tribal Peoples No. 169 (a legally binding international instrument open to ratification) include important articles on indigenous peoples' rights and claims to land and natural resources¹⁷. Article 29 of the UN Declaration on the Rights of Indigenous Peoples explicitly defines *their right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources* (UN Declaration on the Rights of Indigenous Peoples, p. 11).

The decisions on the Cancun Agreements of the United Nations Framework Convention on Climate Change (UNFCCC) requests developing country parties to address land tenure issues, promote and support safeguards related to transparent and effective governance structures and ensure respect for the rights of indigenous peoples and all members of local communities, particularly vulnerable groups such as women¹⁸. The request of the Cancun Agreements to address land tenure issues is very broad and leaves individual countries to establish what tenure issues are most relevant for REDD+ as well as how to address them. The Cancun Agreements include a section on the promotion and support of safeguards to ensure respect for the knowledge and rights of indigenous peoples and members of local communities when undertaking REDD+ activities (Appendix 1, (C))¹⁹.

The decision of the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) is more specific (Decision XI/19, adopted in 2012). It urges countries to implement fully relevant provisions and decisions of the UNFCCC and CBD in a coherent and mutually supportive way (paragraph 6). The CBD includes, inter alia, more specific advice on the application of safeguards related to indigenous peoples and local communities. The convention calls for nationally specific solutions, taking into consideration that tenure rights and rights issues have an impact on indigenous peoples, local communities and benefit-sharing (Annex, paragraph 8). The convention also states that to enhance the benefits and avoid negative impacts on biodiversity from REDD+ activities, land ownership and land tenure should be considered in accordance with national legislation (Annex, paragraph 17 (e)).



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The Voluntary guidelines on the responsible governance of tenure

The Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security were endorsed by the Committee on World Food Security in May 2012, and subsequently by the UN General Assembly in December 2012²⁰. They seek to: improve tenure governance; contribute to the improvement of capacity to develop policy, legal and organizational frameworks regulating the range of

tenure rights over land, fisheries and forests; enhance the transparency and functioning of tenure systems; and strengthen the capacities and operations of implementing agencies and all persons concerned with tenure governance.

The Guidelines can inform REDD+ countries that are developing their own strategies, policy and legal frameworks and activities. Although the national measures to address tenure concerns may vary, they can all be informed by the same principles and internationally acceptable standards for practices set out by the Guidelines (See Annex 1 for Guiding principles of responsible tenure governance and principles of implementation). They may equally serve as a basis that allows the government, civil society, the private sector and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices (FAO. 2009. Land Tenure Working Paper 10). They can also provide a basis for developing national land-based indicators on which consensus has already been reached. Tenure reform, as shown by the scope of the Guidelines, is an enormous, endogenous change process and requires a long-term perspective. There is great potential in integrating and linking REDD+ tenure work in broader land tenure reform processes and country strategies to implement the Guidelines²¹. Indeed, the resources available for REDD+ readiness are not sufficient to carry out national tenure reforms, hence tenure arrangements for REDD+ will be best developed in association with a wider and bigger approach to tenure by governments.

Recommendation

Developing national approaches for short and long-term measures to tackle REDD-related tenure challenges can be guided by the principles and internationally accepted standards for practices set out in the Guidelines.

2.2 Local experiences with tenure in the REDD+ context and lessons learned from PES

Achieving land tenure security is a complex long-term process, but there are examples of how to improve tenure security in the short term. Similar to REDD+, payments for environmental services (PES) aim to achieve environmental goals through incentives. Many evaluations of PES schemes show that environmental or ecosystem services were based on tenure rights over land and forest resources. Evidence suggests that the success of implementing PES schemes often depends greatly, but not only, on the protection of tenure rights, and also that PES schemes can have a positive effect on clarifying existing property rights (Landell-Mills & Porras, 2002; Porras. *et al.*, 2012; IUCN, 2009).

PES schemes offer valuable insights on delineating land owned by indigenous peoples and the importance of strengthening local land and forest institutions (Naughton-Treves & Day, eds., 2012, p. 102). For some, improved land tenure security is the main motivation to participate in forest conservation schemes (Doherty & Schroeder, 2011, Arpels & Clements, 2012). For instance, in REDD+ pilot activities in Cambodia some local communities received indirect benefits from improved protection of existing forest and resources access rights and livelihood assets (Arpels & Clements, 2012 in Naughton-Treves & Day, eds.).

Evidence from Indonesia indicates that tenure security is crucial to fostering the ability and interest of the communities to contribute to REDD+ goals (Resosudarmo *et al.*, 2013, p. 13). This research also shows that tenure security may entail a wide range of issues, including households' perception of tenure security, the ability to prevent encroachment from neighbouring villagers or enforce other forest management related rules, internal and external community disputes and as well as community awareness of the weak de jure status of their customary tenure rights²².

Secure tenure rights on paper do not necessarily translate into secure tenure rights in practice, and tenure rights on the ground can be strong without being defined by national law (Bolin *et al.*, 2013). The weak link between de jure and de facto tenure rights reinforces the need to assess the recognition and protection of tenure rights by looking at what is actually happening on the ground, especially in terms of enforcement. An innovative aspect of some PES schemes is the definition and allocation of new types of environmental rights²³ (IIED, 2002), which could provide an opportunity to strengthen existing land tenure rights. In many cases de facto rights were documented temporarily through the PES contract after a screening process that confirmed the legitimacy of land occupancy (Greiber, 2009).

3. How to improve the governance of tenure²⁴ in the REDD+ context

3.1 Participatory methods to protect and engage legitimate tenure rightsholders in REDD+ target or affected areas

Participatory mapping methods can help protect statutory and customary tenure rights, in particular the rights of those who rely on resources to support their basic livelihoods. FAO's Participatory Negotiated Territorial Development (PNTD)²⁵ offers technical advice on recognizing, securing and protecting the rights of local stakeholders that could be applied to REDD+. The methodology involves analysing and mapping the often complex tenure system, including customary tenure, property rights and patterns of natural resource use. It recommends analysing stakeholders by assessing and addressing both the interdependencies and power asymmetries among actors in the relevant area and aims to ensure that the views and interests of all stakeholders, particularly marginalized groups, are represented and incorporated into decision-making processes²⁶. Policy-makers, local stakeholders and government officials then determine development, conservation and management goals and strategies through dialogue and negotiation.

The Rainforest Foundation UK (RFUK) has also launched a programme on participatory, community-based mapping of land tenure and governance systems in the Democratic Republic of Congo (DRC) and the Central African Republic (CAR). The Programme developed an online interactive geographic database of Central Africa (www.MappingForRights.org) and can offer valuable insights on the documentation of customary tenure through the use of satellite and GPS technologies. New tablet-based geo-spatial technologies enable remote forest communities to upload validated data on land tenure, resource use and illegal forest activities, in near-real time, to the database.

Research findings also suggest that the collaboration between networks of community forest user groups and national forestry initiatives can be a great opportunity to strengthen tenure clarity (Bolin *et al.*, 2013). This collaboration can help engage local stakeholders across multiple jurisdictions and create dialogues with government ministries, thus recognizing and enforcing *de facto* tenure rights, as well as transferring responsibilities of forest management to the local level.

• Recommendation

• A variety of approaches can be used to enhance tenure clarity and reach a common understanding of who holds what rights, for how long and under what conditions.
• Recognizing and protecting the rights of indigenous peoples and local communities and engaging these rightsholders in REDD+ through fair negotiation and dialogue is crucial for a more sustainable, effective and equitable outcome.

Linking maps of customary rights to policy-making: Central African Republic

The government of the Central African Republic has been actively engaged in RFUK's mapping programmes. The Forest Ministry and the High Commissioner for Human Rights have worked closely with RFUK through training, policy development and implementation. This has resulted in the protection of local and indigenous peoples' rights around the Mbaéré-Bodingué National Park, supporting the implementation of ILO Convention 169 on the Rights of Indigenous Peoples and the development of draft policy and legislation on the allocation of community forests.

Source: RFUK. 2011. Parc National De Mbaéré-Bodingué : Contribution des communautés locales et autochtones et de la société civile Centrafricaine pour une gestion durable des ressources forestières et de l'environnement, Bangui.

3.2 National tenure policies and REDD+

Tenure policies can have an important impact on deforestation and forest degradation as well as on the protection of local customary rights. Overlapping or contradicting policy provisions may affect REDD+ planning and implementation. Some REDD+ countries have included tenure policies contributing to forest conversion in their readiness proposals (Williams, 2013) but a range of challenges might prevent them from committing to policy reforms in relation to forest tenure²⁷.

Inconsistencies between land and forest policies and laws can be found in many countries. In Tanzania and Mozambique, for example, the land laws give communities rights to the natural resources on their lands, while the forestry laws state that the national government has control over natural resources (Naughton-Treves & Day, 2012, p.4). REDD+ might be able to provide an incentive to resolve these inconsistencies and the allocation of rights to benefit from forest products. (Vhugen & Miner, 2012).

A recent cross-sectoral analysis of policy and legislative frameworks in Central Sulawesi, Indonesia recommends taking into account sectoral and inter-sectoral policy and legislative frameworks related to land use and forest management (Reetz *et al.*, 2012). The analysis suggests that cross-sectoral climate change policy frameworks could provide opportunities to identify and resolve inconsistencies in domestic policies.

Recommendation

Fostering collaboration between land and forest administrations, through cross-sectoral coordination, is an important step to reach a common understanding on REDD+ related tenure clarification and measures adapted to country context. It is also crucial that key stakeholders, including civil society and indigenous peoples, participate fully and effectively in dialogue and processes related to clarifying tenure issues.

Careful consideration of how legal and policy provisions are implemented in practice can help in understanding whether customary land rights favour men and create risks of excluding women from REDD+ activities²⁸. The UN-REDD Programme aims to support countries to promote gender-sensitive REDD+ processes by developing a Guidance note on guidance-sensitive REDD+ and has already taken actions to mainstream gender considerations in strategic planning^{29,30}. FAO has also developed a technical guide on the governance of tenure specifically focused on gender-equitable governance of land tenure, which can support the mainstreaming of gender-sensitive approaches in REDD+ planning and implementation³¹.

There is no specific type of tenure system (private/individual or communal) and policy that can be recommended to countries that are considering adapting policy frameworks for REDD+ needs. Policy development is a process that has to be adapted to the country context, involving a range of stakeholders and interests, and the time is needed to identify appropriate tenure arrangements to achieve selected objectives (FAO, 2011). A wider national effort, political will and an enabling environment will speed up REDD+ efforts to address tenure needs and make them more comprehensive and sustainable.

3.3 Recognizing and protecting tenure rights in legal tenure frameworks at national and subnational levels

In order to be successful, land tenure systems must be based on the daily practices of the people on the ground (FAO, 2010). Legal frameworks supportive of REDD+ must be flexible enough to accommodate multiple, evolving tenure systems, and not seek to codify a single regime³².

In considering possible REDD+ legislation, it is essential to take into account that each country has its own legal system based on its own sources of law. The following questions may arise: should laws be introduced at national or subnational levels; if a REDD+ law is required, what aspects should be regulated through subsidiary legislation; would contract agreements be sufficient to clarify rights and responsibilities of the parties involved in the implementation of REDD+ activities.

Taking the example of existing legislation on water-related payments for environmental services (PES) schemes, the constitution of a country can be a relevant instrument for REDD+ countries. An assessment could be made to ascertain if the constitution provides space for laws that uphold appropriate forms of secure tenure to support REDD+. Although time consuming, new legal provisions may be introduced to establish land rights or recognize the value of nature and its ecosystem services (Greiber, 2009). These provisions should be complemented by specific legal provisions contained in the national or subnational laws enacted by parliaments.

Enacting REDD+ laws or amending existing national laws

Countries may choose to adopt a REDD+ specific law and establish enforcement mechanisms to promote the reduction of emissions from deforestation and forest degradation. In the case of PES, very few countries have adopted specific PES laws or decrees (e.g. Argentina, Costa Rica, Viet Nam). A more flexible alternative is to amend existing forest, land use and natural resource related laws according to PES objectives. This may also apply to the case of REDD+ related tenure concerns, and in particular the clarification of what rights will be granted in the context of REDD+. REDD+ provisions aiming to clarify land rights could be included in the forest law, but also in the environmental, agriculture and land laws, in order to guarantee harmonized legal frameworks and avoid inconsistencies.

Mexico has adopted legal reforms to support REDD+, including the decision that forest owners will be the direct beneficiaries of the economic revenues generated by the sustainable management of their forests. The Democratic Republic of Congo, Ecuador, Kenya and, Paraguay are currently undertaking gap analyses of forest and environmental laws to support the drafting of new REDD+ provisions, including carbon rights and benefit-sharing, or the development of secondary legislation in the near future.

Success of the adoption of secondary REDD+ legislation

Until now, the adoption of secondary sources of law, such as regulations or decrees at national, regional, departmental or local levels, has been more successful in responding to REDD+ needs in the short term. Recently, Brazil approved the adoption of a state REDD+ law in 2013³³ for Mato Grosso that includes provisions aiming to achieve effective participation of local communities and indigenous peoples involved in REDD+ projects and the establishment of equitable benefit-sharing mechanisms.

Recommendation

National legal frameworks and policies related to tenure may be screened to assess whether they protect tenure rights to land and forest resources and how they relate to deforestation. Where gaps and uncertainties exist, countries may wish to invest in tenure reform and/or integrate additional REDD+ related provisions in existing legal and policy frameworks.

3.4 Tenure institutions and administrations' relevance for REDD+

Administration of tenure includes systems for recording tenure rights, valuation and taxation, regulated spatial planning and dispute resolution, all of which can be guided by the FAO Guidelines. Tenure rights are established through formal as well as customary and informal institutions, with increasing attention paid to legal recognition of the latter when there is broad societal consensus of tenure rights' legitimacy.

Linking tenure administration to REDD+ is, however, challenging because weak governance in tenure administration systems is a common and severe problem (FAO, 2007). REDD+ and tenure administration requirements may not match because legal recognition of tenure rights takes time compared with the planning horizon of REDD+. REDD+ solutions for recognition of tenure rights may not fit the broader framework of tenure rights, increasing conflicts and disputes. Tenure rights change, so data must be up-to-date and systems sustainable.

Innovative technologies and their value for improving tenure rights administration

Spatial data are at the heart of tenure rights administration systems. The spread of rapidly changing information and communication technologies (ICTs) is profoundly affecting the variety of technical approaches to improving tenure rights administration, creating opportunities for rapid and efficient recording and administration of all tenure rights. These include statutory and customary, public, individual, group and community tenure rights that are particularly important for successful REDD+ planning and implementation and benefit-sharing models. The biggest challenges of using new technologies might be the regulatory framework, institutional and individual capacity, and financial resources required for successful application, maintenance and management of such technologies.

Land demarcation in Rwanda

The Government of Rwanda decided in 2003 to design and implement a comprehensive, national land policy. Using an innovative community-based systematic adjudication and demarcation method for land registration, 5 000 para-surveyors were sent in 2009 to the field to systematically title all the land in a relatively short time, until 2013, using new GPS and orthophoto mapping³⁶ technology. The country fulfils three major preconditions for successful land policies: 1) political will; 2) budget allocation and financial support by the government; and 3) innovative community-based mapping method.

Source: Zülsdorf, G. 2013. Land tenure regularisation support programme in Rwanda. See also <http://www.newtimes.co.rw/news/index.php?i=15043&a=55530>.

In the case of Rwanda, after five years of proper legal, institutional and capacity building preparation, the systematic process of adjudication and cadastral mapping of all ten million land parcels in the country took just four years³⁴ and cost less than US\$ 8 per parcel. The use of modern spatial imaging, positioning and information technologies³⁵ helped to achieve land registration quickly and with adequate accuracy. Conventional land survey technologies for this process might have taken several decades and would not have been financially affordable.

Recommendation

Innovative technologies such as Global Navigation Satellite Systems (GNSS), satellite and aerial imagery, Geographic Information Systems (GIS), mobile phone spatial data applications, and computerization of land records are creating opportunities for the rapid and efficient recording and administration of tenure rights, provided the process is driven by political will and supported financially.

Institutions involved in administration of tenure

Multiple ministries and specialized agencies are often involved in implementing policies and enforcing laws governing tenure and REDD+. Tenure-related institutional mandates need to be clearly defined, along with responsibilities and effective cooperation between different levels of government. Civil society's role as a watchdog in advocacy, awareness raising, legal assistance and developing capacity for people to be able to enjoy and protect their legitimate tenure rights in the context of REDD+ is critical. Private sector interests related to tenure and REDD+ include professional service providers and investors, all of whom will benefit from clarity and security of tenure rights. Risks of investment are high where policies and laws are weak and tenure rights not clearly defined.

Local administration of customary land use

Everybody should be aware of their tenure rights and duties, understand their value, and learn how to protect themselves against corrupt and unlawful behaviour of others. Free, prior and informed consent (FPIC) of indigenous peoples, and participation, negotiation and a process of fair dialogue for communities with customary tenure rights are important for tenure governance and REDD+. Reinforcing weak governance in customary structures may be important, especially if they are distributing benefits under REDD+.

Capacity development processes and tools that could be applied in the REDD+ context

Most REDD+ countries have a tenure capacity gap: some countries generally report in their national programmes a lack of capacities for dealing efficiently with the

adjudication and recording of tenure rights, as well as a lack of operational capacity in land administration, particularly in relation to fiscal policy and the adjudication of concessions³⁷. There are several tools that countries can use to support tenure capacity development processes in the REDD+ context.

FAO has recently launched Improving governance of forest tenure, a practical guide³⁸ that aims to develop capacities to improve tenure governance and assist countries to apply the Guidelines. This tool is part of a series of FAO Governance of Tenure Technical Guides and can be used to translate principles of the Guidelines into mechanisms, processes and actions. It provides examples of good practice and presents useful tools for activities; e.g. the design of policy and reform processes, the design of investment projects, and guiding interventions.

The Land Governance Assessment Framework (LGAF)³⁹ led by the World Bank, in collaboration with FAO, UN Habitat, the International Fund for Agricultural Development (IFAD) and the International Food Policy Research Institute (IFPRI), is a methodology to help countries assess the land governance setting, and identify priority areas that require more attention or reform. It focuses on six key areas of policy⁴⁰. The methodology draws on global experience to assess technical levels of the land sector and can inform policy dialogue. The assessment is implemented in a consensual and participatory way, involving local experts.

4. Conclusion: from temporary tenure arrangements to national tenure reforms

Clarifying tenure is of paramount importance to understanding who to involve in REDD+ decision-making processes as well as who is entitled to receive benefits. The people who live in areas where REDD+ will be implemented have their own rights, objectives and interests. In particular, indigenous peoples and local communities need to understand their rights and responsibilities related to REDD+ and have the possibility to participate in REDD+ decision-making and negotiation, and obtain benefits provided by access to forest resources and contributing to REDD+ goals. However, there are no immediate quick fixes or one-size fits all solutions to develop tenure arrangements for REDD+ because of the high complexity of tenure reforms and the country-specific nature of tenure systems.

This policy brief has presented a few ways that can help in addressing tenure-related challenges in the REDD+ context; e.g. participatory mapping of tenure and legal instruments that contribute to recognizing and protecting tenure rights and define environmental laws, assessing national legal and policy frameworks and their consistency with REDD+ objectives or amending existing laws to determine legally who will receive benefits generated from contributing to REDD+ goals.

Tenure is an important cross-cutting issue, and the good governance of the tenure of land, forest and natural resources will contribute to the successful implementation of REDD+ and, most importantly, to food security and poverty reduction and national development goals as well as provide climate change benefits through REDD+ activities where appropriate.



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Annexes

Guiding principles of responsible tenure governance and principles of implementation*

3A General principles

3.1 States should:

1. Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.
2. Safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.
3. Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.
4. Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.
5. Prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.

3.2 Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights.

Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights.

Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved. States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. Where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States should take additional steps to protect against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies.

3B Principles of implementation

These principles of implementation are essential to contribute to responsible governance of tenure of land, fisheries and forests.

1. **Human dignity:** recognizing the inherent dignity and the equal and inalienable human rights of all individuals.
2. **Non-discrimination:** no one should be subject to discrimination under law and policies as well as in practice. Equity and justice: recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people, within the national context.
3. **Gender equality:** Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.
4. **Holistic and sustainable approach:** recognizing that natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration.

- 5. Consultation and participation:** engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.
- 6. Rule of law:** adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.
- 7. Transparency:** clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all.
- 8. Accountability:** holding individual, public agencies and non-state actors responsible for their actions and decision according to the principles of the rule of law.
- 9. Continuous improvement:** States should improve mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programmes and secure on-going improvements.

Acknowledgements

With many thanks for comments and suggestions from Charles Mc Neil (UNDP), Thomas Enters (UNEP), Emelyne Cheney (FAO), Anna Knox (LAND Project, Rwanda), Darryl Vhugen (Landesa) and Gernot Brodnig (FCPF)

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Notes

1. FAO. 2002.
2. Knox, *et al*, pp. 21-34.
3. See review of 36 publications that examined 118 cases investigating the links between different forms of tenure (private, public, communal, including various types of rights) and forest change (Robinson *et al*). The study also stresses that many socioeconomic and political factors (e.g. governance, political stability) can be pivotal direct and indirect drivers of deforestation that are not easy to disentangle from tenure. The impact of different types of tenure on deforestation varies greatly depending on the region, country and local area.
4. Sunderlin *et al.*, in Robinson *et al*.
5. Evidence from small-scale case studies in Nicaragua, for example, shows that land titling may exacerbate deforestation and that the absence of tenure security could have positive effects on the local and global environment (Liscow, 2013).
6. Sunderlin *et al.* 2013.
7. In China and Viet Nam, for example, due to national processes similar to privatization, forest land is increasingly allocated to private households. In Europe forest management moves from the government to the private sector (the main changes took place in the Russian Federation) and in Latin America from the government to the community level. In South and Southeast Asia, approximately 18 percent of the total forest area is managed by local people (including customary rightsholders). See FAO, 2011, pp. 17-22.
8. The government allocates and grants *de jure* rights to resources user by formal laws while informal rights established by resource users themselves are called *de facto* rights. See Schlager & Ostrom, p. 254.
9. Rights refer to particular actions that are authorized (V. Ostrom 1976). Rules refer to the prescriptions that create authority to undertake particular actions related to a specific domain (Commons 1968) in *ibid*, p. 250.
10. In some African countries, there is a specific concern that REDD+ could challenge the status quo of tenure and in such a way as to revive social tensions or conflict. Other fears include potential conflict between customary and public tenure systems as well as between migrants and communities in place. Concerns were raised also over stakeholder exclusion, gender issues, and weak capacities to resolve tenure conflict. See UN-REDD. 2013.
11. Cambodia is a good example for REDD+ grievance and dispute resolution mechanisms that build on experience of local dispute resolution practices. See Consensus Building Institute. 2013.
12. Legitimate tenure rightsholders means that the rightsholder can be recognized by social systems that are based on written policies and laws or unwritten customs and practices.
13. Universal Declaration of Human 1948. Article 17.
 - 1) Everyone has the right to own property alone as well as in association with others.
 - 2) No one shall be arbitrarily deprived of his property.
14. Universal Declaration of Human Rights, Article 25; International Convention on Economic, Social and Cultural Rights, Article 11.
15. In the same line, access to land affects a broad range of fundamental human rights. In rural areas in particular, the realization of the right to food is intimately tied to the availability of land on which to grow crops. Additional rights, including the right to water, the right to health, the right to work, are all linked to the access to land. Identity, particularly for indigenous groups, is also associated with land.
16. It was adopted by the UN General Assembly in March 2008, and includes articles with very specific content on the recognition of indigenous people's territories as well as their rights to own, use and control their territories (articles 25-28, pp.10-11).
17. The ILO Convention on Indigenous and Tribal Peoples no. 169 adopted in 1989 has been ratified by 20 countries. Once it ratifies the Convention, a country has one year to align legislation, policies and programmes to the Convention before it becomes legally binding. The Convention includes a section on Land (articles 13-19), and requires States Parties to identify lands traditionally occupied by indigenous peoples and guarantee their rights of ownership and possession (article 14). According to article 15, "the rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded". These rights include the right of these peoples to participate in the use, management and conservation of these resources". The Convention also requires the provision of legal procedures to resolve land claims (article 14), protects against forced removal and establishes a right of return and compensation for lost land through either land (of at least equal quality and quantity) or money (article 16).
18. UNFCCC/CP/2010/7/Add.1 – Decision 1/CP.16, paragraph 72 "Also requests developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the

- safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities". See UNFCCC, Conference of the Parties (COP). 2010. Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010 (available at <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>).
19. UNFCCC/CP/2010/7/Add.1 – Decision 1/CP.16, paragraph 72, Appendix I, section 2 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. See *ibid*, p. 26.
 20. The UN General Assembly adopted a resolution that:
 1. Encourages countries to give due consideration to implementing the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, as endorsed by the Committee on World Food Security on 11 May 2012.
 2. Requests the relevant entities of the United Nations system, in accordance with their respective mandates and in the most cost-effective manner, to ensure the speedy dissemination and promotion of the Voluntary Guidelines. This resolution on Agriculture Development and Food Security was proposed by the Second Committee and is contained as a draft in its report: United Nations General Assembly. 2012. Agriculture development and food security, Report of the Second Committee, sixty-seventh session, Agenda Item 26 (available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/67/443&referer=/english/&Lang=E).
 21. FAO is supporting countries to implement the Voluntary Guidelines in five key areas: 1. awareness-raising; 2. capacity development; 3. technical assistance; 4. partnership creation: and 5. monitoring and evaluation.
 22. The efficiency depended on whether additionality, permanence, and leakage management were ensured by performance-based and benefit-sharing arrangements. See Resosudarmo *et al*.
 23. Landell-Mills & Porras.
 24. "The governance of tenure is a crucial element in determining if and how people, communities and others are able to acquire rights, and associated duties, to use and control land, fisheries and forests. Many tenure problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance". Source: <http://www.fao.org/nr/tenure/en/>
 25. FAO. 2005.
 26. FAO. 2009b.
 27. Forest tenure reform is a process involving many stakeholders with different views, interests and leverage. There are often conflicting goals and a strong opposition to the recognition of rights of less powerful actors. See FAO. 2011.
 28. The RRI brief Re-envisioning REDD+: Gender, Forest Governance and REDD+ in Asia recommends including gender mainstreaming tools in REDD+ activities and ensuring women's tenure security. See: Buchy. 2012.
 29. UN-REDD Programme. 2013b.
 30. Furthermore, an interagency gender working group has been created in the UN-REDD Programme, gender considerations have been integrated into the UN-REDD & FCPF Stakeholder engagement guidelines, and there has been a comprehensive integration of gender considerations in the 2010-2015 UN-REDD Programme Strategy that makes gender equality one of the guiding principles of the UN-REDD Programme. See UN-REDD Programme. 2011.
 31. FAO. 2013a.
 32. "Given the sheer number of different customary structures that coexist in tropical forests, it would be nigh on impossible to formalize one group's rules, or a combination of different groups' rules to produce a meaningful, widely regarded, uniform and operable set of rules.. Any translation of local reality into formal law must therefore continue to have meaning in customary law." See Fitzpatrick 2005 in Doherty & Schroeder, 2011, p. 78; and Doherty & Schroeder Lei N° 9.878, de 07 de Janeiro de 2013.
 33. Zülsdorf, G. 2013. Land tenure regularisation support programme in Rwanda. See also <http://www.newtimes.co.rw/news/index.php?i=15043&a=55530>
 34. Zülsdorf, G. 2013. Land tenure regularisation support programme in Rwanda. See also <http://www.newtimes.co.rw/news/index.php?i=15043&a=55530>
 35. E.g. GNSS, orthophoto mapping, GIS and computerized land recording.
 36. UN-REDD Programme.2013b.
 37. FAO. 2013b.
 38. Deininger *et al*.
 39. The areas include intervention, including legal and institutional frameworks, land-use planning, management and taxation, management of public lands, public provision of land information, dispute resolution and conflict management; and an option module on forestry, large-scale land acquisition and tenure regularization.

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