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LAND TENURE & REDD+

DEVOLUTION OF FOREST RIGHTS, RIGHTS TO BENEFIT FROM FOREST CARBON AND BENEFIT DISTRIBUTION

PROPERTY RIGHTS AND RESOURCE GOVERNANCE INFORMATION PAPER

INTRODUCTION

The concept of reducing emissions from deforestation and forest degradation (REDD+) has gained momentum over recent years as an approach for mitigating greenhouse gas emissions in developing countries.¹ REDD+ has been envisioned as a global incentive mechanism under the United Nations Framework Convention on Climate Change (UNFCCC), whereby developing countries could be financially rewarded for reducing forest-related emissions or increasing forest carbon sequestration. The realities of developing a global REDD+ mechanism have proven to be complex and controversial, with consensus slowly being reached on overarching objectives and principles to guide the mechanism. Yet, there remain significant questions about how REDD+ may operate globally and domestically.

In particular, the social dimensions of REDD+ have emerged as a key challenge. While the primary aim of REDD+ is to reduce emissions, it is also widely agreed that REDD+ should avoid negative social impacts and encourage positive social outcomes (i.e., it should result in “no-harm” and promote “co-benefits”). This rule applies particularly to the communities and Indigenous Peoples who live in and around forests. Most of these communities depend on forests to sustain livelihoods, and they are often *de facto* forest managers. However, across the globe, Indigenous Peoples and forest-dependent communities have a long history of being excluded from government decisions regarding forest allocation, management, and use. This trend stems from a weak recognition of communities’ land tenure and property rights by many governments.

Land tenure and property rights (LTPR) are at the heart of reconciling the challenge of ensuring that local communities have rights to participate in REDD+ activities and access benefits. The devolution of forest rights to local communities has been proposed as an approach to promote participation of Indigenous Peoples and forest-dependent communities in REDD+. Furthermore, emerging experience with clarifying new rights to forest carbon and distributing benefits has the potential to offer insight into the interactions between tenure and REDD+ on the ground. To help catalogue these experiences, the USAID Land Tenure Division commissioned three complementary reports to collect lessons from the field on potential new rights emerging from REDD+, the ability of local communities to benefit from REDD+ programs, and opportunities for forest rights devolution. The goal of this work is primarily to catalogue the interactions between tenure and REDD+ in achieving positive social outcomes, as opposed to documenting emission reduction success. This document: provides a brief overview of land tenure and forest management, the concept of carbon rights and benefit distribution; presents three generic land tenure scenarios for REDD+; and introduces key findings from country case studies. The full draft reports and case studies are available at: <http://usaidlandtenure.net/commentary/2012/08/new-publications-on-climate-change>

Forest land tenure and property rights

National governments own the majority of the world’s forest land. Many critics of state ownership argue that public stewardship of forests has been poor—as evidenced by high rates of deforestation—due to a lack of capacity and/or political will to manage forests sustainably. These criticisms have given rise to a global movement in support of devolving forest rights from governments to local levels. Over recent decades, many communities have gained formal ownership rights to forest land. Others have gained rights to access, use, manage, and/or market forest resources on government-owned land. In many cases, forest rights devolution has been found to result in improved forest stewardship and enhanced local livelihoods. Nonetheless, the majority of forest communities lack secure rights to forests. While some are concerned that national-scale emission accounting for REDD+ will encourage governments to recentralize control over forests, others posit that the mandate, financial resources, and political will generated by REDD+ may also create an opportunity to strengthen community forest rights.

¹ REDD+ refers to “reduced emission from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks” under the UNFCCC

REDD+ “benefits” and benefit-sharing

REDD+ is anticipated to channel significant international financing to developing countries from both public and private sources. At the local level, REDD+ financing will need to be transformed into “benefits” that create appropriate incentives and rewards for the domestic stakeholders who contribute to, and/or incur opportunity costs related to REDD+ programs. REDD+ benefits could reach local communities in at least three forms: (1) direct cash payments; (2) direct provision of goods, services, or entitlements (including potentially land tenure and property rights); or (3) indirect benefits from the implementation of REDD+ activities, such as improved local governance, increased availability of forest products and services, or even provision of improved land tenure and resource rights. REDD+ benefit sharing mechanisms will need to identify legitimate beneficiaries, determine an appropriate type and magnitude of benefits, and deliver benefits at an appropriate frequency. Ultimately, benefit sharing should be equitable, efficient, and effective. It is likely that many REDD+ countries will learn or build from existing benefit sharing mechanisms related to natural resource management, such as payment for ecosystem services (PES) schemes, participatory forest management (PFM) programs, or social agreements relating to forest concessions.

Carbon rights

The concept of “carbon rights” is relatively new and poorly understood. It is open to many interpretations, which are likely to vary between legal contexts. As a key element of carbon rights and effective REDD+ implementation, countries must define and clarify who is legally entitled to REDD+ benefits. This process could be complex in areas where multiple actors have overlapping forest ownership and usufruct rights. Concerns have been raised that centralized national processes to define carbon rights may actually diminish communities’ customary rights to use and manage forest resources, particularly when their rights are not presently recognized or protected under the law. In some circumstances, existing tenure regimes may need to clarify who has the right to benefit from carbon stored in the landscape, for example in countries where the state owns the land, but individuals may acquire customary or statutory tenure over planted trees, or in cases where communities have customary rights to harvest fuelwood.

To date, few countries have created *explicit* legal rights to carbon, whereby the law specifically defines the rights and responsibilities relating to sequestered carbon or reduced emissions. However, even if existing laws do not mention carbon rights by name, they could potentially be interpreted to govern carbon, thus creating an *implicit* carbon right. Finally, some countries have created *contractual* rights to carbon through agreements between parties that are enforceable under national contract or administrative law.

FINDINGS

The three reports describe important links between existing LTPR regimes and emerging REDD+ programs. Specifically, the reports reveal three ways that LTPR is likely to impact REDD+. First, LTPR influences forest management outcomes, though the relationship is not always direct or predictable. Second, LTPR has implications for the clarity and security of carbon rights, thus playing a role in access to REDD+ benefits. Third, LTPR may shape local benefit sharing rules and institutions.

To shed light on how these relationships work in practice, the case study findings will be presented in the context of three generic LTPR scenarios: (1) areas where full ownership rights have been devolved to forest-dependent communities; (2) areas where there are co-management arrangements or limited devolution of rights to communities; and (3) areas where there is no legal recognition of community forest rights. It is important to recognize that these are stylized scenarios and that results for both social and emission reduction objectives will be highly contextual.

Scenario 1: Devolution of full ownership rights to communities

Since 1980, local communities and Indigenous Peoples have gained ownership rights over large areas of forest land, particularly in Latin America and to a lesser degree in Asia and Africa. Granting communities control over forest resources can provide impetus to develop improved forest management rules. However, evidence suggests that secure tenure by itself does not ensure improved stewardship. Experiences in Latin America suggest that overarching incentive structures, regulatory frameworks, and community capacity are also key factors for enabling sustainable forest management on community owned lands.

The case studies suggest that communities that own their land are more likely to have clear and secure rights to benefit from forest carbon, even if carbon rights are not explicitly addressed in the law. In Mexico, for example, land-owning agrarian communities known as *ejidos* are thought to be in a strong position to participate in and benefit from REDD+. Intermediary institutions may be necessary to link *ejidos* to the entities seeking to invest in

forest carbon. Nonetheless, *ejidos* are likely to be the focal point of local benefit sharing arrangements. The case studies suggest that community institutions will often require additional capacity building for effective REDD+ implementation, but that communities possessing secure land rights often have stronger existing institutions.

Case Study	Type of Mechanism*	Community Forest Rights	Overview
Mexico: ProArbol Program	PES	Land and forest ownership	National, government-sponsored program for payments for water services and biodiversity. Government enters into agreement with communities to maintain forest in exchange for compensation. <i>Key lessons: Clear and secure tenure enhances community access to opportunities, financial resources, and technical support. PES payments are in addition to and potentially secondary in value to co-benefits of forest management (e.g. water, soil conservation, employment). Benefits and livelihood linkages are not always clear or equitable.</i>
Indonesia: Katingan REDD+	Concession / REDD+	Not legally recognized	Private company is applying for an Ecosystem Restoration Concession on 220,000 ha of state forest. Company seeks to generate and sell carbon credits. Benefits will be shared with surrounding communities. <i>Key lessons: Uncertainties in concession application process create weak incentives for project developer to make early investments in community. Concession will enhance legal clarity over land tenure and forest use, which may benefit communities. Lack of legal recognition of community forest rights may limit bargaining power and livelihood.</i>
Nepal: Norad REDD+	CBFM / REDD+	Usufruct rights	Community Forest User Groups (CFUGs) unite to form a Watershed REDD+ Network. CFUGs measure and report forest carbon sequestration. Forest Carbon Trust Fund markets carbon credits and distributes payments to CFUGs based on carbon and social criteria. <i>Key lessons: Usufruct rights are extensive and long-standing, allowing CFUGs to capture significant portion of benefits. Benefit distribution within communities is sometimes skewed in favor of wealthier households and against women, indigenous communities, and casteless dalits. Improvements in the governance and social capital of CFUGs have occurred over many years, making a case for REDD+ to leverage existing institutions, even if some inequalities persist.</i>
Tanzania: Suledo Forest	CBFM	Usufruct rights	Villages obtain rights to manage the forest and harvest resources for commercial purposes, conditional on implementation of a forest management plan. Villages receive 100% of revenues generated. <i>Key lessons: Creation of aggregate institutions (uniting multiple communities) present trade-offs in terms of transaction costs, leakage risks, corruption risks, and downward accountability. Design and governance of aggregates is critical to success of program, and it can take 10 years for them to become relatively functional.</i>
DRC: Ibi-Bateke Project	Concession / CDM	Not legally recognized	Land is privately owned and leased to private company for agro-forestry and afforestation. The company sells resulting carbon credits under CDM. An NGO manages benefits to local communities. <i>Key lessons: Need for permanent institutions to facilitate dialogue between communities and project developer, creates reliance on intermediary, rather than strengthening local governance. Success is highly dependent on interests and motivation of project developer, creating need for broader social safeguards to scale the approach. Project developer chooses non-financial benefits to minimize risk of elite capture, and links between benefits and performance are weak.</i>

*Community-based forest management (CBFM), Payment for Ecosystem Services (PES), Clean Development Mechanism (CDM)

Scenario 2: Co-management or limited devolution of forest rights to communities

In recent decades, a number of forest management paradigms have emerged that devolve limited forest rights to communities, while maintaining government land ownership. In some cases, such as Nepal's Community Forestry program, communities are granted a relatively comprehensive set of rights, including rights to withdraw forest resources for subsistence and commercial uses, to exclude non-community members from using the forest, and to develop forest management rules. In other cases, the rights devolved to communities are quite limited, and the government maintains the power to regulate management and community use. Experience suggests that when the breadth and duration of rights devolved to communities are not adequate to provide secure tenure and meaningful financial benefits, communities may be unwilling to bear the opportunity costs associated with improved forest stewardship.

These types of forest management arrangements are being considered in many countries as a potential vehicle for REDD+ programs. However, the case studies suggest that clarifying carbon rights in this context will likely be complex. It is straight forward to presume that the land owner (i.e., the state) also owns the carbon and is the primary benefit recipient. This assumption becomes complicated where communities possess rights to extract

and/or manage forest resources that store carbon. In Nepal, this ambiguity has created tension between Community Forest User Groups (CFUGs) and the central government. Some CFUGs are concerned that REDD+ will be used by the government to diminish their existing rights, suggesting the need for explicit rights to benefit.

Designing local benefit sharing arrangements for REDD+ is also likely to be complex since multiple rights holders and local institutions may exist. The case studies suggest that the relative influence of communities in the design of such institutions and their level of beneficiation will depend on the extent of their forest rights and the capacity of community institutions to articulate related demands. In most cases, their bargaining power will be low, and they will require external support to participate in REDD+. As is characteristic of existing co-management schemes, benefit sharing rules will likely be determined by government regulation.

Scenario 3: No legal recognition of community forest rights

The vast majority of forest-dependent communities still lack legally recognized rights to forests. In some areas, communities continue to use and manage forests without interference from external actors. However, without long-term tenure security, there may be few incentives to manage forests sustainably. More frequently, communities come into direct contact—and often conflict—with government-regulated forest uses, such as protected areas and logging concessions. These uses often restrict or prevent community livelihood options. As a result, some countries, like Democratic Republic of Congo (DRC) and Indonesia, have established mechanisms for concession holders to negotiate “social contracts” with surrounding communities, which promise benefits to communities.

In this scenario, carbon rights are almost certain to remain with the state. However, some countries are currently experimenting with concession-based models for REDD+, which convey carbon rights to the concession holder through a contract (e.g., the Ecosystem Restoration Concession in Indonesia). The concession holder may choose or be required to share REDD+ benefits with surrounding communities. Past experiences with community-company benefit sharing arrangements, such as the Ibi-Bateke Clean Development Mechanism project, provide some insights. In most cases, an intermediary organization will be necessary to support the community and facilitate negotiations. Since the community lacks formal rights, the concession holder will exert control over the form and use of benefits. REDD+ concession holders would probably seek to regulate benefit sharing in ways that are consistent with long-term forest conservation (e.g., provision of services rather than direct cash payments).

DISCUSSION

Of the three scenarios described above, the scenario in which communities possess full ownership rights seems most desirable from several perspectives. First, it enables REDD+ programs to build from existing benefits and incentives related to sustainable forest management, thus increasing the likelihood of achieving sustainable emission reductions. Second, it provides for relatively clear and secure carbon rights, thus enabling communities to access REDD+ benefits. Third, it puts communities in charge of local benefit sharing arrangements. These reasons provide a compelling argument for designing REDD+ programs to foster expanded community forest ownership, particularly in Africa and Asia. However, past experience suggests that effective devolution is a long-term process, which is often linked to the rise of democratic and accountable governments and considerable international support.

The second scenario—co-management or limited rights devolution—presents uncertain REDD+ outcomes, very dependent on the national legal context. In the past, limited rights approaches have yielded mixed outcomes for forests and local livelihoods. Specific outcomes are often shaped by the quality of local governance, the balancing of stakeholder rights and responsibilities, and the design of benefit sharing arrangements. Thus, these factors should be considered carefully in REDD+ design. In particular, rights to carbon benefits need to be clarified, ideally in a way that maintains/expands forest rights rather than restricting them, as well as ensures fair benefit distribution.

Finally, the third scenario presents the greatest risks and least benefits for communities under REDD+. Nonetheless, this paradigm characterizes the vast majority of the world’s forest area. While a government-managed or concession-based approach to REDD+ may be appealing to some governments that see national REDD+ as a top-down responsibility, this approach is unlikely to secure the rights of communities or strengthen community institutions. Thus, the extent to which communities are able to benefit from REDD+ will depend on the interests and motivations of those in control of the REDD+ program. If REDD+ programs do not allow communities to improve their livelihoods, it is unclear whether REDD+ emission reductions will be sustainable. In this context, social safeguards and minimum standards become a crucial tool for protecting the rights and interests of communities.

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