Analysing REDD+

Challenges and choices

Editor	Arild Angelsen
Co-editors	Maria Brockhaus
	William D. Sunderlin
	Louis V. Verchot
Editorial assistant	Therese Dokken
Language editing, project management and layout	Green Ink Ltd

Center for International Forestry Research
CIFOR advances human wellbeing, environmental conservation and equity by conducting
research to inform policies and practices that affect forests in developing countries. CIFOR is a
CGIAR Consortium Research Center. CIFOR's headquarters are in Bogor, Indonesia and it also has
offices in Asia, Africa and South America.

Tenure matters in REDD+
Lessons from the field

Anne M. Larson, Maria Brockhaus and William D. Sunderlin

- At the national level, efforts to address land and carbon tenure issues have been limited, although REDD+ has brought unprecedented international attention to tenure and other rights of forest peoples.
- Project level interventions to address tenure encounter substantial obstacles if they do not have national backing; at the same time, national land registration institutions are often inadequate for effectively addressing the central, underlying issue of customary tenure rights.
- REDD+ policy makers can move forward on macro level approaches by attacking the underlying drivers of deforestation, while proceeding in parallel to target solutions to specific tenure problems; both, however, are likely to face resistance.

9.1 Challenges to forest tenure reform

In many countries, tenure reform goes hand-in-hand with REDD+. Tenure reform processes support REDD+ implementation; at the same time REDD+ can provide an incentive to push forward tenure reform. Both processes, however, face substantial constraints. The challenges

to forest tenure reform have been discussed extensively in the literature. Sunderlin (2011) briefly traces the history of local control and customary rights, through the suppression of rights and the appropriation of forests, particularly under colonialism, to the current 'global forest tenure transition', under which many governments have begun to recognise – to some extent – community claims. The forms and extent of rights recognition has been varied, in some cases involving the titling of large indigenous territories, in others, land grants to smaller community forests, while in the most timid reforms communities have received new, temporary use rights that are an improvement on the past but are far from constituting substantial reform (Larson *et al.* 2010).

Although the restoration and formalisation of customary rights have received substantial international attention, this shift is not seen in all countries. Even where policies have been implemented, they have often been fraught with problems and met with resistance (Larson 2011); and some countries that have made significant strides in recognising community forest rights have tried to roll back these policies more recently (RRI 2012).

Tenure reforms take time and resources, both for the political process of negotiating compromises and passing new laws and for the technical aspects, such as reforming cadastres, and demarcating and titling land. Larson (2011) identifies three types of obstacles to tenure reforms in favour of indigenous and other communities living in forests, corresponding largely with the 4Is framework introduced in Chapter 2: limited technical, human and economic capacity to carry out accurate and effective demarcation and titling (Information); political and economic interests of actors competing for forest land and resources, including some state actors (Interests); and ideological barriers, such as opposition to, or concerns about, the idea that forest dwellers can be effective forest stewards (Ideas). These obstacles are deeply rooted in national institutional structures (Institutions).

In spite of these obstacles, there has been unprecedented attention to forest tenure under REDD+. Business as usual pressure to clear forests is in direct conflict with the awareness that standing forests are crucial for climate change mitigation (Sunderlin and Atmadja 2009). The cases studied in this chapter demonstrate both large leaps and, more commonly, small steps forward in the recognition of forest tenure rights. In all cases there is far more to be done.

This chapter assesses the experience so far in addressing tenure challenges at national and project levels and considers ways forward for tenure and REDD+. What are the primary tenure problems faced in each country and to what extent are these recognised and addressed at the national level? How are REDD+ project interventions resolving tenure problems, and

what are the obstacles to doing so? Past research on forest tenure reforms demonstrates that even if local rights are recognised by law, the ability to exercise those rights is often challenged by competing actors and interests. Given these difficulties, how can REDD+ move forward on policies and interventions that work for both forests and local people?

The research findings presented here are drawn from CIFOR's Global Comparative Study (GCS) on REDD+, focusing on the six countries studied at both national and project levels (see Appendix for a full description of methods). Those are: Brazil, Cameroon, Indonesia, Tanzania and Vietnam; national scale data are available for Peru, but project level information is only preliminary.

9.2 Why tenure matters for REDD+

Clear and secure tenure rights to land, forests and carbon have been identified as key elements for successful REDD+ strategies (see Figure 9.1). On the one hand, clarifying[1] and strengthening tenure can, in itself, contribute to decreasing deforestation and degradation. Many researchers have found that
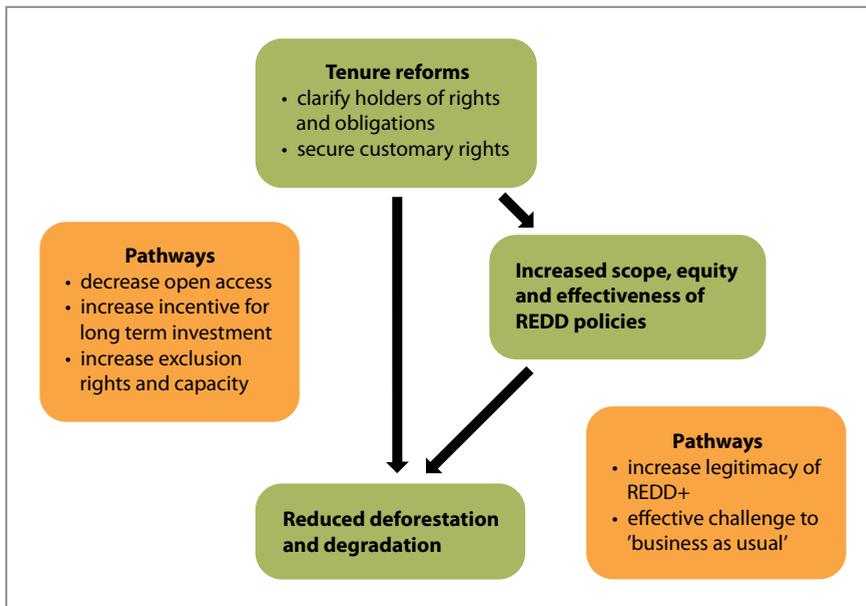

Figure 9.1 Tenure reform pathways to reducing deforestation and degradation

---

1 Simply 'clarifying' rights in light of REDD+, without taking into account customary rights and issues of social justice, could have serious equity implications. In our research sites, however, most project proponents have a justice oriented agenda.

tenure insecurity commonly fosters forest clearing, open access dynamics and land grabbing and have argued, therefore, that secure land tenure rights are more likely to lead to forest conservation and long-term investment in forests. For example, farmers have often cleared forests to establish rights – sometimes as required by law, but commonly for customary claims as well. Where long-term rights are not secure, the risk of investing in slow-growing products like timber is too high; and the establishment of clear borders with the right and ability to exclude outsiders reduces incursions and overlapping claims. In some cases, however, insecurity has been associated with conservation (due to the fear of losing investments) and secure rights by no means guarantee that landholders will not clear forests for more profitable alternatives (Angelsen 2007). Nonetheless, secure tenure generally appears to be better for forests than insecure tenure, although on its own, it may be insufficient to guarantee better forest management.

Clarifying tenure, and securing rights for forest-based people, also increases the viability of REDD+ policies and assures greater equity, effectiveness and efficiency. Specific policies that support REDD+ include those that reduce agricultural rent, increase forest rent, and create or regulate protected areas, as well as cross-cutting policies such as decentralisation or governance reforms (Angelsen 2009b; Angelsen 2010b). Not every policy requires attention to tenure. For example, creating off-farm opportunities and supporting agricultural intensification in key locations while abandoning new road construction in forests could slow forest colonisation and even stimulate out-migration from forests. This could be significant for forests if migration of small and medium producers is the main cause of deforestation and degradation.

Addressing tenure substantially increases the options available. These include other policies to reduce agricultural rents, such as establishing roads in forests with strict regulations; or policies to increase forest rents, such as better prices for forest products, community forest management or payment for environmental services schemes. Protected area regulation requires clarity and enforcement of borders.

Disregarding tenure limits the scope and potential of REDD+, places forest-based people at risk and may engender such opposition that it guarantees failure (Larson and Petkova 2011). The potential risks of land grabbing by outsiders and loss of local user rights to forests and forest land is one of the main (though not only) reasons that many indigenous and other local peoples have publicly threatened to oppose REDD+, bringing substantial international attention to these concerns under the banner "No rights, no REDD" (Tauli-Corpuz *et al.* 2009; Box 9.1). The implications of tenure for REDD+ can be summarised as follows (see also Sunderlin *et al.* 2011):

Effectiveness

- The essence of REDD+ is to reward those who maintain or enhance the carbon sequestration of forests and compensate them for lost opportunities; this could include direct payment schemes to landholders, which would require a clear right holder who has rights to exclude others (see Börner *et al.* 2010).

- The holders of rights to forest carbon must be held accountable in the event that they fail to fulfil their obligation – the 'conditional' part of conditional incentives.

Efficiency

- Clear tenure rights reduce transaction costs, such as time and funds required for conflict resolution.

- Secure tenure rights increase the policy options available, and thereby enable governments and project proponents to choose more cost effective implementation strategies.

Equity

- When tenure is unclear or not formalised, forest people may be excluded from forests and/or from participation in REDD+ benefits; in particular, if REDD+ increases the value of standing forests, it may lead to a resource rush that places the rights of current residents at risk.

- REDD+ will inevitably prohibit certain uses of forest resources; this must be done with due process and compensation, and without increased hardship, for poor forest peoples.

Box 9.1 Papua New Guinea: Customary rights versus carbon cowboys
Andrea Babon and Daniel McIntyre

Papua New Guinea is unique among REDD+ countries as around 97% of its land area, and virtually all of its forest, is owned by customary landowners and regulated by custom, not by the state. Customary land ownership is enshrined in the Constitution; and customary landowners must be consulted and give their informed consent for any developments on their land. Indeed, landowners can veto any developments of which they disapprove. With reference to the 'bundle of rights', customary landowners have rights of access, use, management, and exclusion. However, customary land cannot be 'sold'.

The seemingly strong de jure tenure rights in Papua New Guinea make the country an interesting case study for REDD+. In many ways, landowners

Box 9.1 continued

in Papua New Guinea are in an extremely powerful position, as resource owners, to participate in REDD+ on their own terms. However, in practice, many landowners are not aware of their rights – leaving them vulnerable to exploitation. This has perhaps been most obvious in the granting and renewal of logging concessions, and the recent increase in the granting of Special Agriculture and Business Leases (SABLs) over vast areas of land. REDD+ is proving to be no different.

In 2008–2009, media reports began to emerge of landowners signing over carbon rights to so-called 'carbon cowboys' – unscrupulous local agents often working for foreign carbon project developers – with virtually no awareness of what they were doing and no legal framework within which to do it. At one stage, one of the most notorious 'carbon cowboys' claimed to have negotiated about 90 different carbon deals with landowners, despite the absence of a national REDD+ strategy.

The government of Papua New Guinea tried to control this 'carbon rush' by requiring any groups interested in carbon trading to have written authority to operate in the country and to be registered with the Office of Climate Change. The government also urged landowners not to sign up to any carbon deals with outside project developers until there was a policy and legal framework in place, and that there would be no legal recourse for landowners who did.

The confusion and scandal surrounding the 'carbon cowboys' highlighted the need for general awareness raising and information on REDD+ for landowners. In response, the government and NGOs have held a number of provincial consultation meetings and disseminated information through various media. However, it has been difficult to get information out to remote communities that were often the target of carbon project developers.

Negative attention from the international media, combined with pressure from NGOs and donors, appears to have brought substantial attention to the challenges of achieving effective, efficient and equitable REDD+ within the context of customary land tenure. The 'carbon cowboys' have largely disappeared from the REDD+ landscape in Papua New Guinea, and the contracts they signed are generally seen as having no validity. However, stakeholders continue to grapple with how best to engage landowners in REDD+ policy design and implementation; secure free, prior and informed consent; and ensure landowners receive meaningful benefits. Working through all these issues will take time if it is to be done effectively – something the 'carbon cowboys' failed to understand.

9.3   REDD+ and tenure: Evidence from the field

In five of the six countries studied, forests are primarily public and formally administered by the state (Table 9.1). The exception is Brazil, where 73% of forests were owned[2] by individuals, firms, communities and indigenous people in 2008; official data show a shift of almost 200 million hectares from public to private hands between 2002 and 2008 (Sunderlin *et al.* 2008). The other countries have far less private land. In five of the six countries, a portion of public land has been assigned for temporary use by communities and indigenous people, as well as to individuals in Brazil.

9.3.1   National level problems and policy

Research at the national level identified serious problems with land tenure in all of the countries studied (Table 9.2). Common issues include overlapping titles or claims, land grabbing and elite capture, and outdated or nonexistent land cadastres, among others. In particular, in Cameroon, Indonesia, Tanzania, Vietnam, and to some degree in Peru, there is a substantial difference between

Table 9.1   Forest tenure distribution (2008 data, in millions of hectares)

Country	Public (millions of ha, %)		Private (millions of ha, %)	
	Administered by government	Designated for use by communities and indigenous people	Owned by communities and indigenous people	Owned by individuals and firms
Brazil*	88.6 (21%)	25.6 (6%)	109.1 (26%)	198.0 (47%)
Peru	42.3 (67%)	2.9 (5%)	12.6 (20%)	5.3 (8%)
Cameroon	20.1 (95%)	1.1 (5%)	0.0 (0%)	0.0 (0%)
Tanzania	31.8 (89%)	1.6 (4%)	2.1 (6%)	0.1 (0%)
Indonesia	121.9 (98%)	0.2 (0%)	0.0 (0%)	1.7 (1%)
Vietnam	9.7 (73%)	0.0 (0%)	3.5 (26%)	0.1 (0%)

Source: Sunderlin *et al.* 2008, except for Vietnam (Dahal *et al.* 2011)

*Other sources have found that 24% of the Brazilian Amazon is unclassified public land and 13% comprises land settlement projects for individual landholders (Börner *et al.* 2010).

---

2   'Ownership' according to RRI and in this research includes titled lands and those granted unconditionally through secure mechanisms other than titles (see Sunderlin *et al.* 2008).

what local people view as their customary rights and their formal rights from the state's perspective. Many problems for people and communities living in and near forests stem from the sense of insecurity generated by the public nature of land and forest ownership.

Despite the apparent importance of forest tenure, research so far suggests that there is little reason to believe REDD+ strategies are making significant changes to the status quo. Analysis based on a profiling exercise in the countries discussed here shows few important new tenure initiatives in relation to the problems identified. Although 90% of REDD+ Preparation Proposals (RPPs) and National Programs from UNREDD highlight tenure insecurity as a concern (White and Hatcher 2012), and although tenure was a popular topic during the stakeholder interviews conducted for the country profiles, the debate remains at a rhetorical level (see also Williams *et al.* 2011). The policy measures listed in Table 9.2 most often refer to policies that are already in place and are insufficient to solve the problem, or in some cases are a source of other tenure problems. For example, existing land allocation and registration initiatives have sometimes generated insecurity as a result of a lack of technical capacity and financial resources, inconsistent rules and procedures, and the failure to 'match' the policy with on-the-ground reality.

Among the cases, Brazil is clearly an exception. The Brazilian government launched an important land regularisation (allocation and registration) programme that links land tenure reform and environmental compliance in the Amazon. It has also recognised and delineated customary lands, and this process continues, although it is slow and problematic. The other countries have at best taken small steps. In Vietnam, the Forest Land Allocation (FLA) process has received mixed reviews (Pham *et al.* 2012) and is far from recognising customary rights (Box 9.2). The same is true for community forests in Cameroon. A recent, high level call for recognition of customary rights to forests in Indonesia is unprecedented, but it is far from clear what this will mean in practice.

> **Box 9.2 Myth and reality: Security of forest rights in Vietnam**
> Thu Thuy Pham, Thu-Ba Huynh and Moira Moeliono
>
> The forest land tenure system in Vietnam is mainly governed by the Land Law (1993, 2003) and Law of Forest Protection and Development (2004). The Land Law provides farming families with stable and long-term rights: 20 years for land planted with annual crops, and 50 years for perennials. According to the law, the land and natural resources belong to the 'people' as a whole and are managed by the 'state' on their behalf. The state, therefore, has exclusive management and decision making rights over natural forest; it then

allocates use rights to the people. Since 1999 (Decree 163), land use rights, issued through a land use certificate called a Red Book, can be transferred, mortgaged, rented, exchanged, or inherited and are valid for 50 years.

In 2004, the Forest Protection and Development Law was passed, granting forest users management rights over the forest, as well as the right to generate income and other benefits from their labour and investments in forest land. A key highlight of this law is the state's recognition of the role and rights of communities as one type of forest land manager.

These laws provide an important legal foundation for the future implementation of REDD+. Nevertheless, two major issues have emerged that need attention from decision makers and REDD+ strategists.

First, more than 50% of the country's forests and often the highest-quality forests are managed by state companies (SFEs) and management boards, whereas households manage 18% and communities only 1%, of mostly poorer-quality and degraded forests (Hoang *et al.* 2010). Although SFEs are required to contract forest land under their control to third parties for long-term use or protection, in practice they often contract third parties on an annual basis. Furthermore, it is almost impossible for communities to enter into legal contracts due to the excessive requirements under Vietnam's 2005 Civil Code for establishing their legal status. In effect, then, communities cannot sign REDD+ contracts. This means that future REDD+ funds might be retained at the government level, with only very limited payments and carbon benefits accruing to the households and communities who are the actual forest managers.

Second, experience from implementation of the Land Law and Forest Protection and Development Law, as well as other national programmes such as Forest Land Allocation (FLA), shows mixed results. In some places these programmes have had a positive effect on poor farmers, while the overall impact is unclear. Households and communities still do not control their forests, as they still need to seek permission from the relevant agencies to use forest land or fell trees. Moreover, three problems interfere with customary and even recognised owners and might in fact create open access conditions: i) the gap between national law and traditional land use practices, ii) capital accumulation for households that have access to political power and social networks, and iii) poor enforcement of regulations affecting the effectiveness of the FLA. Allocated forest land is often infertile and, in the absence of financial and technical support from the government, lands are often simply abandoned. More seriously, land classified by the government as 'unused' is in fact under customary tenure, which is not formally recognised by law. FLA does not permit joint ownership at the household and community levels, which limits the rights of women and undermines upland production systems that are based on joint property approaches.

Table 9.2 National and project level tenure problems and initiatives

Country	National tenure problems	National policies	Project level problems	Project level initiatives
Brazil	• Unclear tenure rights, overlapping rights, extensive areas claimed by squatters (unclassified public land) • Pressures on indigenous areas in spite of clear borders and rights • Major inconsistencies in interpretation of the law, failure to implement regulations • Lack of sufficient funding and staff for land regularisation; very slow progress	• National Institute for Colonisation and Agrarian Reform (INCRA) has undertaken three major revisions of the land cadastre, in 1999, 2001 and 2004 • Formal process of indigenous lands recognition • Terra Legal programme (2009) linking Amazon regularisation to environmental compliance	• Difficulty of conducting regularisation (large areas, revision of past claims) • Land concentration • Titles and land use plans required for environmental regulation • Customary limits not always respected in regularisation • Ongoing insecurity and conflict due to histories of land conflict • Removal of colonists from indigenous area	• Technical, financial and other support for titling • Support for land use planning • Project land tenure regularisation activities in line with national policies and in collaboration with federal and state institutions
Indonesia	• Contradictory laws regarding land and forest rights, failure to recognise community customary rights in forests • Limits on customary use rights in favour of business use of forests • Absence of rules and procedures for registering community forests • Inaccurate maps • Conflicting claims, boundary disputes and forest encroachment	• Chair of REDD+ panel has proposed releasing village and customary land from state forests • Proposed project to unify all national land/ forest maps	• Conflicts with palm oil interests • Potential conflicts with logging concession holders • Failure to recognise community customary claims • Conflicting claims	• Negotiation with government at all levels • Variety of mechanisms to provide village communities with clear tenure • Negotiation with concession holders • Land use planning

Vietnam	• Gap between national and customary laws, customary tenure not recognised • Overlaps between indigenous and colonist land claims • Lack of human and financial resources for forest land allocation (FLA) • Technological problems leading to inaccurate maps • Inequity in forest allocation; land grabbing • Limited understanding by forest users of rights and responsibilities associated with FLA	• Forest Land Allocation (FLA) process (since 1983) to allocate land users up to 30 ha of forest land in production and protection forests for up to 50 years • Land Law 2003 • Upcoming National Forest Inventory	• Conflicting community versus household forest management • Notable discrepancy between local people's perceptions/ customary rights and the government's perceptions • Unclear land boundaries • Ambiguous land rights and lack of understanding of the meaning of Red Book titles • Breakdown of traditional living styles influencing land tenure arrangements	• Establishment of a technical working group on land issues at provincial and district levels • Local fund on participatory forest management will discuss how to distribute payment • Exploring mechanisms to test how to integrate tenure and carbon • Contributions to land use planning at commune and district levels
Tanzania	• Government interprets formal land categories in such a way that it owns much of village land • Conflicts between farmers and pastoralists • Conflicts over evictions of pastoralists for environmental purposes • Contested and overlapping tenure regimes and risk of elite capture	• Village Land Act (1999) recognising customary tenure whether or not land is registered • Draft national REDD+ strategy classifying village land as state land ('general land') if not registered	• Carbon rights not addressed at national level • Village land classified as general land, lack of land certificates • Boundary disputes among villages • Unclear or insecure individual rights • Short or unclear time frame for management rights	• Border clarification • In process of obtaining village land certificates • Seeking to modify Community Forest Management (CFM) template from 5 to 20 years • (Little attention to individual claims)

Table 9.2 continued

Country	National tenure problems	National policies	Project level problems	Project level initiatives
Cameroon	• Conflict between customary and formal law; formal law limits local rights to use rights • Community forestry represents an attempt to make a formal link between communities and forests without recognising customary claims • Only the elite have the means to register land, which is the only formally recognised ownership right • Zoning has resulted in constant conflict among stakeholders • State authorises overlapping rights and obligations among sectors (forest, tenure, mining, water, etc.)	• Forest policy reform process begun in 1993, including the creation of community forests • Forest law reform process underway • Consultations with stakeholders on land use including boundary definition • Shift from *ad hoc* programmes to possible national policy on marginalised populations	• No guarantee of carbon rights on customary land • Mismatch between statutory community forest and customary rights leading to conflict • Bantu traditional claims and incursions • Tenuous nature of community forest rights • Border conflicts with national park • Conflicts between indigenous and migrant populations	• Helping community develop community forest management plan and strengthen local institutions • Implementing a tenure strategy with stakeholders consistent with national policy • Supporting attempts to improve community rights to forests (revision of the forest law)

Peru			
• Native peoples have alienable land rights rather than broader inalienable territory rights	• New Law of Forests and Wildlife approved and awaiting implementing regulations	• No legal way to obtain rights in protected area	• Demarcating and registering concession areas
• Overlapping titles and lack of land cadastre		• Few or no exclusion rights	
• State authorises overlapping rights and obligations among sectors (forest, tenure, mining, water, etc)		• Possession contract is temporary and easily reversible	
• Reserves and other forest categories declared on paper but without defined borders		• Overlapping concessions by different government offices	

Governance and tenure issues are largely absent from REDD+ coverage in national media in most of the researched countries. An analysis of more than 500 national newspaper articles on REDD+ published between 2005 and 2009 in five of the six countries (data on Tanzania are not yet available) demonstrates that governance issues did not feature prominently in the way media articles were framed in any of the countries (Figure 9.2).[3] A closer look at subtopics related specifically to tenure reform and carbon rights under the meta topic 'Politics and policy making' confirmed their absence. Only in Indonesia and Brazil were media articles explicitly framed around these issues: in Brazil, in 11 articles the subtopic 'REDD+ and indigenous rights policies' was advocated by representatives of rights organisations and subnational state actors; in Indonesia one article used this frame as well and was advocated by an international research organisation, while a second article was concerned with the establishment of carbon rights and was supported by a national level government actor. Preliminary analysis of articles from 2010–2011 in Indonesia, Vietnam and Peru show no significant changes.
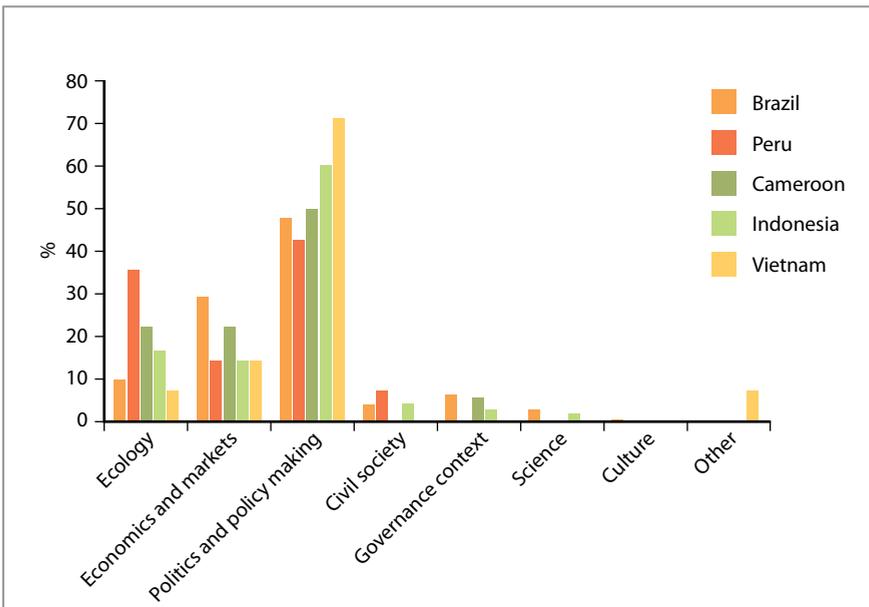
Figure 9.2 Meta topics in national media articles (percentage of total analysed newspaper articles per country)

---

3   A media frame is "a broad organizing theme for selecting, emphasizing, and linking the elements of a story such as the scenes, the characters, their actions, and supporting documentation" (Bennett 1996, as cited in Boykoff 2008:555). In practice a frame is a conceptual lens that brings certain aspects of reality into sharper focus (emphasising a particular way to understand an issue) while relegating others to the background.

Nevertheless, by examining individual position statements by advocates or adversaries who responded to the issues framed in these articles, we identified a number of stances related to governance. In Indonesia, Brazil and Peru, actors stated that REDD+ will require major governance and institutional reform. In Indonesia more than 10% of all positions expressed (27 of 258) demonstrated concern that REDD+ risks dispossessing or reducing access to forest resources and harming traditional forest users (see Chapter 5). These preliminary findings indicate that although articles are rarely framed around these concerns, a number of actors position themselves around them.

The organisations that are concerned about tenure are mainly actors from international environmental nongovernmental organisations and domestic civil society organisations. An actor-level analysis showed, however, that neither of these groups is perceived by other actors in the policy arena as influential in most of the national policy networks, where Ministries of Forestry and other state entities are at the centre of decision making.

9.3.2 Project level tenure

The GCS research assessed tenure problems at the project and village levels through interviews with proponents, and village level interviews and focus groups. Proponents reported on the main tenure challenges at their sites, and village focus groups were asked about land tenure conflict and insecurity, the presence of external forest users and the degree of rule compliance, regarding their village specifically.

Most of the land in the REDD+ project research sites is formally owned by the state. In Indonesia, Cameroon and Peru, the vast majority of land in the villages studied is owned and administered by the government but under the *de facto* control of households and villages. In Indonesia, problems stem from overlapping claims, including abandoned logging concessions, small-scale loggers, and larger oil palm, mining and logging interests. Oil palm interests threaten a number of project sites. One site each in Cameroon and Peru is located in a protected area where legal land rights are not permitted for local people. The other site in Cameroon is focusing on an area designated as community forest (CF). Tenure issues include the insecure nature of community rights (renewable every 5 years), overlapping claims and conflicts between village members who fall in and outside the CF area. Users in the second site in Peru have a 40-year concession contract for Brazil nut production. Government policy is a source of conflict, as different government agencies give out overlapping concessions for the same forest area to different stakeholders (Selaya personal communication).

In Brazil, almost all of the lands in the study villages are state lands formally assigned to individuals who reside in land reform settlement projects or occupy

unclassified public lands. Two of the project sites are in areas with a history of serious land and resource conflicts, but settlement and registration projects have been underway for several years. In the third site, regularisation is a new activity under REDD+ readiness programmes. While there are still conflicts, overlapping claims and households without formal rights or title, the central tenure-related problems revolve around the logistics of regularisation – a process that is costly, slow, bureaucratic and sometimes fails to respect existing customary or locally legitimate claims (Duchelle *et al.* 2011b).

In Vietnam, in the four villages studied at one project site, most forests have been granted to individuals through land certificates known as Red Books. These certificates have generated problems, as right holders do not understand their limitations. There is an important illegal land market and problems with unclear boundaries (Huynh, personal communication). Customary land rights are strong, but there are significant differences between the government's and villagers' perceptions and understanding.

In Tanzania, REDD+ projects are being developed in areas where an important portion of the land is in the process of being assigned to or is owned by communities (see Box 9.3). Tenure problems at the project sites stem primarily from the lack of formal village land certificates in the assigned lands, which leaves lands formally under state ownership, and border disputes.

Tables 9.3 and 9.4 summarise the results of village-level focus groups on questions about tenure clarity and security. These questions were not asked in relation to REDD+ or the project intervention but were aimed at addressing the overall tenure situation prior to the intervention. Table 9.3 shows responses on the presence of land conflict, perceptions of insecurity and forest rule compliance by villagers. The presence of conflict is notable especially in the study sites in Cameroon (83%), Indonesia (55%) and Brazil (44%), although an important portion of villages in Tanzania also have lands in conflict (24%). A direct question about insecurity found problems in even more of the villages studied, ranging from 100% in Cameroon, to 85% in Indonesia, 50% in Brazil and 32% in Tanzania. Only in Vietnam was there no report at the village level of either conflict or insecurity. Compliance with forest use rules was problematic at the study villages in all countries, however, with Vietnam reporting low or moderate rule compliance in 100% of villages, Brazil in 75% of villages and the other three countries in 50–55%.

Table 9.4 addresses exclusion rights – the right and ability to exclude unwanted outside forest users. Interestingly, almost all of the villages report having the right to exclude outsiders from their land (88–100%). What is particularly notable, however, is that in Brazil, Cameroon, Tanzania and Indonesia, the vast majority of villages stated that the basis of that right was custom, whereas

only 6–20% of villages in these countries stated that the right was based in formal law.[4] Again, in contrast, the villages in Vietnam all emphasised their formal rights.

Box 9.3 Participatory forest management as an institutional foundation for REDD+ in Tanzania
Therese Dokken

Since the 1990s, Tanzania has promoted Participatory Forest Management (PFM) as a strategy for conservation and sustainable management of their forests. By 2006 approximately one-tenth of the forested land was under PFM agreement. In the Tanzania National Strategy, PFM is identified as an institutional foundation for REDD+, and access to REDD+ finances can potentially facilitate and speed up its implementation.

The main objectives of PFM are to improve rural livelihoods, conserve and regenerate forest resources, and promote good governance. There are two different approaches to PFM that differ in the level of decentralisation of rights and responsibility. The first approach is community based forest management (CBFM). CBFM takes place on land which is registered under the Village Land Act (1999) and is managed by the village council. The village has the full ownership rights and management responsibility and retains all forest-generated revenue. The second approach is a collaborative management approach, called joint forest management (JFM). It takes place on national or local government forest reserves. Land ownership remains with the state while forest management responsibility and revenues are divided between the state and the community and formalised through a JFM agreement.

Evaluations indicate that both PFM approaches contribute to improved forest management, but CBFM appears to be more effective than JFM (Blomley *et al.* 2011). Property rights are exclusive and enforceable, providing incentives for communities to invest in long-term management. In contrast, under JFM rights are unclear and local use and harvest of forest products is highly restricted. The same is true for the benefit sharing mechanisms and equity aspect of the two PFM approaches. While all benefits are transferred to the community under CBFM, there is no agreement on the portion of forest management benefits that should be transferred to communities involved in JFM. Both effectiveness and equity are important considerations for choosing which PFM strategy to pursue under REDD+ projects. Improvements and clarifications of tenure and benefit sharing mechanisms are needed, particularly under JFM, to ensure sufficient incentives for sustainable forest management.

---

4   These questions were asked with the enumerator reading the options, and more than one answer was permitted.

Table 9.3 Land conflict, insecurity and local forest rule compliance in sampled villages by country (by number and percent)

Country	Villages with an area of land in conflict	Villages with tenure insecurity over at least a portion of village lands	Villages with low or moderate forest rule compliance by villagers	Total number of villages in sample
Brazil	7 (44%)	8 (50%)	12 (75%)	16
Cameroon	5 (83%)	6 (100%)	3 (50%)	6
Tanzania	6 (24%)	8 (32%)	13 (52%)	25
Indonesia	11 (55%)	17 (85%)	11 (55%)	20
Vietnam	0 (0%)	0 (0%)	4 (100%)	4

Note: includes all project sites except Berau, Indonesia and Peru

Source: Sunderlin *et al*. (2011) and village survey database

The last three questions in Table 9.4 refer to the actual presence of external users, whether that use is prohibited, and whether unsuccessful attempts have been made to exclude external users. There are external users in 44% (Tanzania) to 90% (Indonesia) of villages studied. External use is prohibited in most or all cases in Tanzania and Cameroon, and in about half in Brazil. In addition, the fact that some users have 'permission' does not necessarily mean they have the village's permission. For example, though only 28% of villages in Indonesia report that the external use is prohibited, in the other 72%, seasonal and customary users are likely to have permission from the village, while plantations, agroindustrial firms and logging concessions are more likely to have permission from an office of government but *not* from the village. Finally, some villages in each country, except Vietnam, have unsuccessfully tried to exclude outside users (16–19% in Brazil, Cameroon and Tanzania and 40% in Indonesia).

9.3.3 Project level solutions

Virtually all project proponents identified tenure problems at their sites and see their resolution as central for moving forward with REDD+ projects (Table 9.2). They took early actions to identify the sources of insecurity and conflict, and to address the causes where possible; by securing land titles for local stakeholders where this was appropriate and possible; clarifying village and forest boundaries if needed; and identifying and delimiting the forest area to be set aside (Sunderlin *et al.* 2011). Securing land tenure rights has often

Table 9.4 Exclusion rights and practice in sampled villages by country (by number and percent)

Country	Villages with the right to exclude outsiders	Basis of the right*		Villages with current external use of forests	Villages where external use is prohibited (% of those with current external use)	Villages with unsuccessful attempt to exclude external users	Total number of villages in sample
		Custom/ customary law	Formal law				
Brazil	14 (88%)	14 (88%)	1 (6%)	11 (69%)	5 (45%)	3 (19%)	16
Cameroon	6 (100%)	6 (100%)	1 (17%)	3 (50%)	3 (100%)	1 (17%)	6
Tanzania	24 (96%)	19 (76%)	5 (20%)	11 (44%)	7 (64%)	3 (16%)	25
Indonesia	19 (95%)	17 (85%)	3 (15%)	18 (90%)	5 (28%)	8 (40%)	20
Vietnam	4 (100%)	0 (0%)	4 (100%)	2 (50%)	0 (0%)	0 (0%)	4

* Some villages selected both

Note: includes all project sites except Berau, Indonesia and Peru

Source: Sunderlin *et al.* (2011) and village survey database

involved negotiating or working closely with government entities[5] in charge of land, and sometimes supporting those agencies through technical assistance or funding.

When existing mechanisms to secure rights are inadequate, some proponents have played an advocacy role, such as lobbying to reform the community forest concessions in Cameroon, which only provide rights for 5-year intervals. A few are promoting strategies to clarify carbon rights, and in some cases also advocating for village rights. In sites where there are important overlapping claims – such as with palm oil concessions in Indonesia – proponents are devoting an important part of their energy on tenure to addressing these contradictions.

Only about half of the proponents interviewed (9 out of 19) were satisfied with the outcome of attempts to address tenure issues at their sites, three were both satisfied and dissatisfied, and five were unsatisfied (two did not have an opinion). Even those who were satisfied, however, stated that there is still much more to be done. In some sites, such as one in Tanzania, the proponent stated that they had been forced to exclude some areas because problems with tenure were not resolvable (Sunderlin *et al.* 2011).

9.4 Overcoming obstacles

Tenure problems present obstacles for the effectiveness, efficiency and equity outcomes of REDD+. At the site level, project proponents have almost all given serious attention to tenure and sought to address problems to the best of their ability. Nevertheless, they are largely limited to working through existing government bureaucracies and under the constraints of current policies. Hence in most cases proponent efforts are restricted by the lack of serious attention to tenure at the national policy level (see Chapter 6).

This is not the case in Brazil, where land regularisation pre-dates REDD+, but REDD+ has generated additional incentives to move forward with reforms, through activities such as support for the Terra Legal programme at project sites. Proponents are able to work closely with government to address tenure issues (Duchelle *et al.* 2011b). Even in Brazil, however, the existing system of regularisation does not solve all problems and in some cases creates new ones.

In most of the other countries studied, substantial reforms to current tenure policy appear unlikely. In Vietnam, proposals for reform of Red Book policies

---

5   Note that in a few cases the proponents *are* government entities, as in Acre, Brazil.

have met resistance. Similarly, there is little indication that the approach to customary rights in Tanzania or Cameroon will undergo radical change. In Indonesia, the recent, bold statements of a high-level government leader in support of customary forest tenure rights demonstrate how the mobilisation of evidence and courageous stakeholders through REDD+ initiatives has provided support for new tenure policies. Nevertheless, although the call for reform has come from a high level, there are many layers of government and many other powerful stakeholders who have resisted all such reforms in the past.

Under these circumstances, how can REDD+ move forward? The tenure problems discussed above can be grouped into a few main issues. Table 9.5 summarises these, their implications for REDD+ and potential solutions. Some problems clearly require land regularisation or reform, such as lack of clarity of ownership and overlapping claims or the resolution of conflicts between customary rights and state ownership. Other problems include encroachment by external actors, multiple concessions on the same land, poor rule enforcement, problems with land regularisation processes and unaccountable local representation. These problems could be addressed by other kinds of institutional reforms, including strengthening state and local institutions, harmonising state policies and the use of participatory methods and free prior and informed consent (FPIC) processes.

It is notable that all of these policies – whether they aim to resolve tenure problems specifically or advance REDD+ initiatives generally – challenge the deep-rooted economic and political interests of 'business as usual'. Business as usual in forests refers to the constellation of interests that seek to perpetuate privileged commercial access to forest lands and resources and thus, often, to forest conversion. REDD+ constitutes an institutionalised effort to confront business as usual and arrest the processes of deforestation and degradation, and therefore faces the same challenges as forest tenure reform.

Table 9.5 Tenure issues, implications for REDD+ and potential solutions

Tenure issue	Implications for REDD+	Potential solutions
Lack of clarity on ownership, overlapping claims	Limits to policy options and lower potential for success; lack of clarity regarding benefits and accountability in performance-based payments	Land allocation and registration (regularisation)
Customary rights versus state ownership	Tenure insecurity and/or failure to respect villagers rights can lead to conflict, compliance problems, local hardship and unjust benefit distribution	Ensure FPIC Rights recognition
Conflicting land use decisions/ concessions across levels and state institutions	Failure to decrease carbon emissions	Harmonise state policies Strengthen multilevel governance institutions
Lack of right and/or ability to exclude (including colonisation of indigenous lands)	Local stakeholders in REDD+ (right holder/accountable party) potentially unable to fulfil obligation in performance-based arrangements; failure to decrease emissions	Grant and enforce exclusion rights Secure the borders of indigenous and village lands (local and state institutions) Develop alternative economic opportunities for colonists
Poor rule enforcement, monitoring and sanction; failure to implement land use planning	Failure to decrease carbon emissions	Strengthen local and state institutions for planning and regulation Implement participatory land use planning processes, FPIC
Technical issues in regularisation processes; mismatch between new, formal rights and previous de facto or customary rights	Inaccurate maps leading to mismatch between land area and landholder; elite capture	Strengthen institutes in charge of land registration Greater stakeholder participation in mapping processes
Undemocratic collective land representation; decisions without broad local agreement*	Compliance problems and hence failure to decrease emissions; elite capture of benefits	Ensure FPIC including community members, not just 'representatives'

* Problem not identified in the project sites but in other cases, such as Papua New Guinea (Box 9.1) and elsewhere.

9.5 Conclusions

At both national and project levels, tenure issues have been widely recognised as relevant to REDD+. Project proponents have sought to increase the security of local forest rights, whereas national level concern has remained largely rhetorical. At the local level, most proponents are working "through their own initiative and with little external assistance" (Sunderlin *et al.* 2011). These piecemeal project interventions are insufficient on their own to secure local rights, or to address the paramount issue of formal exclusion rights – which few communities in this study have been granted.

Can REDD+ only proceed where tenure is clear and secure? Are the obstacles to improving tenure elsewhere insurmountable? Clearly, addressing tenure vastly expands the field of policy options and is more likely to lead to success, while only working where tenure is already resolved places drastic limits on the potential of REDD+. Tenure may be seen as part of the transformational change that is needed for REDD+ in the long-term. We argue that addressing tenure rights is no more challenging than the other policy reforms that would demonstrate a serious commitment to REDD+, and that the unprecedented attention to tenure issues under REDD+ suggests room for optimism. REDD+ policy makers can move forward on macro level approaches to attack the underlying drivers of deforestation, while proceeding in parallel to target solutions to specific tenure problems. Progress will depend on the development of broad alliances to overcome resistance.