

# TENURE AND RESOURCE USE RIGHTS

Lessons learned from REDD+ and other conservation strategies

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## What do we mean by tenure?

The term tenure is used to describe the ‘bundle of rights’ that determine the conditions for access, use, management, exclusion of other users, and ‘alienation’<sup>1</sup> of land and other resources. These rights usually come with associated responsibilities and constraints on how resources are managed. In simple terms, tenure systems define who can use what resources for how long, and under what conditions. Tenure is most commonly used in relation to land but the same bundle of rights applies to other natural resources, including freshwater, coastal and marine resources.

Tenure security is hard to define but rights that are enshrined in law are regarded as more secure than ‘soft’ rights, such as guidelines or policies that may be withdrawn by relevant authorities. For rights to be meaningful, rights-holders need to have access to affordable, equitable avenues through which they can defend their rights and appeal against violations and decisions that affect them.

In many of the contexts where we work, tenure rights do not equate to full ownership of land or resources but rather a sub-set of the ‘bundle of rights’. For example, Village Forest designation in Indonesia grants rights to access, use, manage and exclude other users from the forest area, but not the right to sell or transfer those rights. Often rights are granted for a fixed period of time, subject to certain management regulations, and may be rescinded by the state if these requirements are not met. Legal authority for enforcement of regulations may also remain with the state.

## Why is tenure important for conservation?

Clarity over tenure is an essential requirement for REDD+ and other Payments for Ecosystem Services (PES) projects. Such initiatives require a clear basis for attributing the responsibility for natural resource management and the rights to benefit from associated ecosystem services. If tenure security is uncertain, it may be unclear who needs to be involved in natural resource management activities and who should be rewarded for their efforts to achieve conservation objectives. Tenure is also a key issue that needs to be addressed in any process to fulfil the right to Free, Prior and Informed Consent (FPIC)<sup>2</sup>.

Because of its crucial role, tenure is included as an issue in internationally recognised voluntary REDD+ standards. The **Climate, Community & Biodiversity Standards** (version 3) requires projects to describe and map customary and statutory tenure, use, access, and management rights to lands, territories and resources in the project zone including individual and collective rights, and overlapping or conflicting claims. In the event of unresolved disputes over tenure, the project must

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<sup>1</sup> Defined as the right to sell or transfer ownership

<sup>2</sup> See the paper in this series on Free, Prior and Informed Consent

demonstrate how it will help to bring them to resolution so that there are no unresolved disputes by the start of the project.

The **Plan Vivo Standard** (2012 draft) requires that tenure, including rights to carbon<sup>3</sup> are clarified, but specifically that rights should be held by local communities or smallholders. Project interventions must take place on land where smallholders and/or community groups have clear, stable and long-term land tenure, which includes the right to climate services for all the project intervention areas. Where legal permissions are required from government, the project developer must describe how community or smallholder participants will be assisted to secure such permissions.

Box 1 summarises the importance of secure tenure for the effectiveness, efficiency and equity of REDD+.

### **Box 1: The importance of tenure for REDD+**

#### **Effectiveness**

- *Rights to benefit:* 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 rights-holder with the authority to exclude others.
- *Responsibilities for sustainable management:* 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**

- *Lower costs:* Clear tenure rights reduce transaction costs, such as time and funds required for conflict resolution.
- *Identify optimal implementation strategies:* Secure tenure rights increase the policy options available, and thereby enable governments and project proponents to choose more cost effective implementation strategies.

#### **Equity**

- *Protection of land access and participation rights of traditional resource users:* 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.
- *Protection of well-being of traditional resource users:* 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 dependent peoples.

*Adapted from Larson et al (2012)*

There can be significant benefits of addressing tenure issues for a wide range of conservation interventions focussing on the sustainable use and management of natural resource, not just those with an aim of establishing payments for ecosystem services. Where regulations exist through which traditional resource users can seek legal recognition of tenure, this can provide important benefits to their well-being, for example by eliminating uncertainty regarding rights to access and use a natural resource and by empowering the rights holders to protect this resource from appropriation or exploitation by other users. In addition, the process of tenure clarification, if facilitated using participatory approaches, can result in clear and accepted boundaries, sustainable resource management strategies and empowerment of relevant resource management institutions.

<sup>3</sup> Carbon rights are referred to as ‘rights to climate services’ in Plan Vivo

In the context of REDD+, where much attention has been paid to the potential direct economic contributions of projects to local communities and other stakeholders, the value of these potential non-financial benefits is increasingly being recognised.

## How can we address tenure in practice?

Where FFI is concerned with the conservation of High Conservation Value ecosystems outside the formal protected area network, supporting communities to gain tenure security and building their capacity to sustainably manage biodiversity-rich landscapes can be an effective conservation strategy and help avoid alternative land use scenarios e.g. forest clearance for plantation concessions.

Where FFI is involved in the development of REDD+ projects, we are obliged to ensure that tenure is clarified in order to comply with internationally recognised standards. In some cases community tenure will be a viable and appropriate framework for management of the project area. In such cases, project activities should include supporting communities to gain security or strengthen capacity to exercise existing tenure rights. In other cases, direct community management may not be the most feasible implementation framework, in which case other strategies to ensure local community participation and benefits need to be employed.<sup>4</sup>

Clarification of tenure, alongside capacity-building of local institutions to exercise associated rights and responsibilities, is key to implementation of many of Ostrom's design principles for effective and equitable governance of common pool resources, such as forests or fisheries (Box 2).

### Box 2: Design Principles for Common Pool Resource Governance

1. Define clear group boundaries.
2. Match rules governing use of common goods to local needs and conditions.
3. Ensure that those affected by the rules can participate in modifying the rules.
4. Make sure the rule-making rights of community members are respected by outside authorities.
5. Develop a system, carried out by community members, for monitoring members' behaviour.
6. Use graduated sanctions for rule violators.
7. Provide accessible, low-cost means for dispute resolution.
8. Build responsibility for governing the common resource in nested tiers from the lowest level up to the entire interconnected system.

*Ostrom, E (1990) Governing the Commons: The Evolution of Institutions for Collective Action.*

FFI teams have identified a number of key strategies for working on tenure:

- 1. Understanding the local context.** As with all social aspects of any conservation project, a thorough understanding of the local context is important to ensure appropriate project design and implementation. Use of participatory mapping and engaging the skills of social scientists, such as anthropologists, can help us understand important issues including:
  - The status, cultural heritage, livelihoods and priorities of people(s) in the project area.
  - The nature of rights over land and natural resources in the project area.
  - The nature of interactions between different groups, and actual or potential sources of conflict.
  - The impacts of these factors on land and natural resource use.
- 2. Assessing the feasibility of different tenure models.** Considerations with regard to feasibility assessment include:

<sup>4</sup> See section in this paper 'What strategies can we use to support customary resource users where securing community tenure is not feasible?'

- The socio-economic context mentioned above.
- The applicability, acceptability amongst relevant stakeholders, and complexity of potential tenure and/or mapping approaches.
- Level of commitment and capacity of relevant stakeholders.
- The likelihood that the intervention would result in a positive conservation impact.
- The likely financial resources and time commitment required to achieve the positive conservation impact, and ability to meet that commitment.

As with any feasibility assessment, it is important to be able to take a decision not to proceed with a given strategy if the results of the assessment indicate that this would not be the most appropriate course of action. On the other hand, a thorough feasibility assessment can provide reassurance that a particular approach is appropriate or it can help identify ways to make adjustments to a proposed strategy to increase its feasibility.

- 3. Navigating the process of tenure clarification.** Approval of changes in land tenure is generally through the state, and at variable levels of government depending on the local context. Frequently projects must deal with complex or poorly defined regulations and securing recognition of community tenure in the absence of appropriate government support can be extremely challenging. Whilst political decisions are out of the direct control of projects, risks can be minimised by engaging relevant government institutions throughout the process of working on tenure issues.

Some FFI teams have also engaged directly with national government to support the development of regulations that facilitate recognition of community rights (FFI Liberia) or promote simplification of complex tenure recognition procedures (FFI Indonesia).

## How do we strengthen communities' capacity to govern their natural resources sustainably and achieve positive conservation outcomes?

Although tenure incorporates both rights and responsibilities, secure tenure does not guarantee sustainable management of natural resources by the rights holders. From field experience, FFI teams have identified several strategies to help ensure that interventions based on community tenure achieve long-term biodiversity conservation objectives.

**Commitment to going 'beyond tenure':** Our efforts to support recognition of **rights** must also extend to ensuring recognition of the associated **responsibilities** and empowering rights holders with the **capacity** to meet those responsibilities. This includes providing support to:

- Establish effective and equitable community-level governance institutions, management plans and regulations, including sanctions for non-compliance, and an appropriate framework for dispute resolution.<sup>5</sup>
- Build technical skills in sustainable natural resource management.
- Access additional expertise to address other capacity gaps.
- Monitor management effectiveness and progress towards desired conservation and well-being outcomes.

What happens on the land outside the area of immediate conservation priority will influence what happens inside it. In many cases, working with communities and other stakeholders on resource mapping and strategic land use planning across a village administrative area, or wider landscape, will help ensure more optimal development strategies and efficient resource use.

**Consider both formal legal and traditional customary rights:** Legal rights are often a requirement of REDD+ standards and are needed to guarantee greatest possible security over land and natural resources, and the flow of benefits from REDD+ and other PES projects. However, customary rights have a critical role to play in many contexts, and traditional approaches

<sup>5</sup> See the paper in this series on grievance mechanisms

to community governance may be more influential and capable of sustaining local commitment and compliance to long-term sustainable management.

When working with formal legal frameworks for securing community tenure, FFI has also sought opportunities to support communities to integrate customary systems into management and governance arrangements. For example in Indonesia, recognition of 'Village Forests' through licences issued by the Minister of Forestry and Provincial Governor is complemented by support to communities to develop management plans and village regulations that integrate customary traditions and regulations.

In some contexts, such as the Philippines, recognition of customary rights is legislated and therefore provides an equivalent level of tenure security to other tenure frameworks approved by the state. In other cases, such as 'Other Use' (non-state forest) land in Indonesia, there are no national regulations for recognition of communities rights to forest areas, but 'Customary Forest' can be approved by the District Head and can be used to provide security over forest lands in these areas.

**Promote appropriate land-use strategies and management objectives.** Supporting sustainable use has long been a central part of FFI's conservation strategy. Considerations when facilitating tenure models that permit sustainable use, and supporting associated resource and land use mapping and planning include:

- Sustainable use strategies should be relevant to the local context, taking into account the skills and aspirations of both women and men, and viable economic and market opportunities.<sup>6</sup>
- Development, and monitoring, of a management plan will be essential to govern natural resource use and help establish and monitor sustainable use levels.

### **What strategies can we use to support customary resource users where community tenure is not feasible?**

In some cases, assessment of potential tenure and management frameworks for a project area will conclude that community tenure is not feasible and/or the most appropriate strategy. Through its work on REDD+ projects and other interventions, FFI has experience of other tenure and management frameworks. These include a variety of co-management arrangements between communities, NGOs, the private sector and the state, as well as concession licensing and land purchase.

When working with these models it remains important to ensure the rights of customary users are respected, to facilitate appropriate participation in project activities and enable them to benefit from the project. In the context of REDD+, the **Climate, Community & Biodiversity Standard** does not require tenure to be held local communities, but does require a range of safeguards to ensure that their interests, including those of marginalised groups, are protected and that the overall impact of the project on community groups is positive.<sup>7</sup>

**Co-management of a concession:** in the Siawan Belida REDD+ project in Indonesia, the proposed tenure framework is through an Ecosystem Restoration Concession (ERC) licence whereby an area of state forest is leased to an Indonesian company established by the project. Local communities are dependent on the natural resources of this peat swamp forest, particularly harvesting fish from its lakes and rivers. The project aims to establish co-management plans and equitable benefit-sharing arrangements to ensure local communities play a central role in, and benefit from, restoration and sustainable management of the concession area.

**Co-management of a protected area:** in Liberia, a number of communities live both within and around the Wonegizi forest block, a proposed Protected Area (PA). FFI is facilitating development of a community-based REDD+ project in parallel with support to the government to design the

<sup>6</sup> See the paper in this series on Sustainable Livelihoods

<sup>7</sup> For more information see the papers in this series on Social Impact Assessment and Free, Prior and Informed Consent

management framework for the PA. Whilst the state will retain overall responsibility for the area, this is an unprecedented opportunity to ensure official recognition of the role of the communities in PA management, and their right to access corresponding benefits.

**Land purchase:** FFI has some experience with land purchases as a strategy for bringing areas of exceptional biodiversity value under conservation management. Whilst purchase can be seen as an opportunity to protect highly threatened areas, it is important to also consider reputational and other risks including:

- Being seen to be pursuing Western conservation interests and values at the expense of those of local or national stakeholders.
- A perception that, as an international organisation that works through partnership, FFI should be assisting others to do conservation, rather than purchasing land in other countries itself.
- Mistaking establishment or capacity-building of a 'local NGO' to manage an area as being analogous with empowering local communities to engage in, and benefit from, environmental stewardship.
- The potential to exacerbate existing or latent conflicts and embroil stakeholders in complex, expensive and time-consuming legal processes.

Depending on the context, land purchase may indeed be an appropriate part of the conservation toolkit, but with the following caveats, drawn from FFI's experience to date:

- All potential tenure and management options for the area of interest should be considered through a feasibility assessment, as previously described with purchase being the option of last resort.
- If land is purchased then it should be transferred to local management at the earliest opportunity with the model for local management carefully designed; creating a 'local NGO' to manage the area may not be the appropriate solution.
- If land is purchased there must be a long term commitment to, and financing strategy for, the area.
- Careful assessment of the social context must be undertaken, and a realistic and appropriate strategy developed for engaging local communities.

## What challenges do we face and how have we tried to overcome them?

There are a number of resources available to provide guidance on facilitating participatory approaches to tenure issues, and much can be learnt from the experiences of FFI projects, including our community-based REDD+ initiatives in Southeast Asia and Liberia, Participatory Land Use Planning (PLUP) processes in Belize facilitated by our partner, Ya'axche, and our work on Locally Managed Marine Areas (LMMAs).

### Conflict management

Issues of land and rights are universally sensitive and, where unclear, can be the focus of many competing interests. As a result, conflict can frequently arise in the process of mapping boundaries. This could be boundaries between areas owned or claimed by different individuals or groups (e.g. between villages) or boundaries between different use areas (e.g. dispute over land use zonation in a communally managed area). Poor conflict management can have serious consequences including sparking violence.

FFI teams in Indonesia have developed strategies to facilitate tenure reform while managing potential and latent conflicts. For example in Siawan Belida, West Kalimantan, there are eight villages in the project area, which is designated as state forest land. In half the villages most residents are Christian Dayaks and in the other half the majority are Muslim Malay. There is lack of desire locally to engage in a process to formally mark boundaries between communities, born partly out of historical ethnic and religious tensions, and partly out of suspicion of how state and other authorities might use the resulting maps. This was a key consideration in the assessment of potential tenure instruments and the decision to apply for an Ecosystem Restoration Concession

licence to enable governance of the area as a single forest block with formal collaboration with the eight communities for on-going management.

In Jambi, six villages from the same customary unit (*marga*) are submitting proposals to the Ministry of Forestry for recognition of their Village Forests. Whilst villages must each submit their own application, the communities have strong kinship ties and are keen to avoid introducing any sense of segregation between them. Thus the area will be managed as a single customary area to avoid negatively altering the collaborative dynamic between the villages.

Due to the inherent challenges of working on tenure issues, it is important to support communities and the FFI staff and partners working with them, to build their capacity for effective conflict management, and to seek appropriate external assistance where needed. When facilitating participatory mapping of village administrative boundaries in Jambi for example, the team facilitates meetings between all neighbouring villages to formalise agreements on the location of boundaries between villages. Where agreement is difficult to reach, further inter-village discussions are facilitated, with potential to engage district government to take a final decision if necessary.

In some cases our success in facilitating tenure processes in areas of high conservation value has led to requests from neighbouring communities for similar assistance. While this illustrates how much local stakeholders value this approach, with our limited resources we need to ensure project development decisions are made on the basis of strategic conservation priorities.

### Clarifying rights to carbon

Of specific relevance to REDD+ project development is the issue of clarifying rights to carbon. This can be challenging since national contexts vary widely and, as the importance of clarifying carbon rights is increasingly recognised, different jurisdictions are approaching carbon rights in different ways.

Clarity over carbon rights are requirements for validation<sup>8</sup> to CCB and Plan Vivo standards<sup>8</sup>. Depending on the tenure framework for the project, carbon rights may be held by the community directly or the project proponent may hold carbon rights, and performance-based payments used as a tool to engage local communities in project implementation and as recipients of project benefits. FFI teams have identified a number of steps in clarifying ownership of carbon rights, including:

- Understanding current policies governing carbon rights and the system for securing legal recognition in the relevant jurisdiction.
- Monitoring changes to the above and their implications for current/planned projects.
- Where appropriate, identifying opportunities to influence the policy development process and support recognition of community carbon rights.

### Facilitating tenure in the context of REDD+

By definition, REDD+ aims to increase the economic value of standing forests and to reward avoided deforestation and degradation with financial benefits generated through the trade in carbon emissions reductions. Facilitating clarity of land and resource tenure can be a challenging exercise in its own right. Introducing the concept of carbon value has the potential to introduce a new incentive to clarify rights, but also to complicate negotiations about the precise location of the boundaries of those rights. The timing of introducing the concept of REDD+ to communities, managing expectations of likely carbon benefits, and facilitating constructive dialogue between neighbouring rights holders are all key considerations when addressing tenure in REDD+.

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<sup>8</sup> Under CCB, if clear title over carbon rights cannot be assured prior to validation, evidence must be provided that project proponents' ownership of those rights will be clarified prior to any transaction of the project's carbon assets. Under Plan Vivo carbon rights must be held by the community.

## Key References

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This document is one of a series of outputs from a learning event held in Cambridge in April 2013 to share experience, tools and lessons learned on the social aspects of REDD+ and other conservation strategies.

Topics discussed included: equitable benefit sharing; Free, Prior and Informed Consent; gender; grievance mechanisms; Opportunity Cost Analysis; Social Impact Assessment; sustainable livelihoods; and tenure and resource use rights.

All outputs are available to download from FFI's Livelihoods and Governance library:

<http://www.fauna-flora.org/initiatives/livelihoods-and-governance-library/#learning>



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