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REDD+ and Tenure Rights

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NORWEGIAN REDD RESEARCH NETWORK

REDD+ AND TENURE RIGHTS

Eds: *Hirsch, C., Aguilar-Støen, M. & McNeill, D.*



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This is one of four briefs based on ongoing research by doctoral students at universities in Europe.

1 KEY MESSAGES

REDD+ is to be introduced into areas with complex, conflictual tenancy claims concerning potential agricultural land and forests, but it is also an arena for introducing new interests, stakeholders and power relations. REDD+ might foster local processes that can help clarify and strengthen property and tenure rights, but it may also exacerbate local land conflicts.

2 CONCLUSIONS

There is still uncertainty in many countries on how carbon rights will be managed and regulated. Land or forest tenure might not be directly linked to carbon rights.

Disentangling the different rules concerning access and resource rights is paramount when considering incentives and the potential distribution of costs and benefits in REDD+ projects.

Resource tenure is a highly political field and REDD+ itself will contribute to a changing and highly conflictual context, affecting claims over benefit streams.

In many cases there are conflicts between *de facto* and *de jure* tenure rights. The capacity to legitimize and enforce tenure claims is essential for marginalized groups.

Formalizing resource rights and access may also lead to increased contestation and conflicts. Ensuring a fair and just process which avoids elite capture but ensures local legitimacy will take time, resources and - in the face of powerful vested interests - political will.

Securing *forest* land tenure vs. *agricultural* land tenure is a critical matter, since insecure agricultural land tenure impacts local livelihoods and adds pressure on the remaining forest.

3 IMPLICATIONS

Unclear tenure rights might work as perverse incentives against forest conservation.

There is a need to take into account informal customary regimes and clarify overlapping land tenure regimes, and see to it that REDD+ does not further exclude or put pressure on marginalized groups (e.g. migrants, indigenous peoples and women).

With the creation of the new commodity of carbon requires clarification of who will hold ownership and control and have the right to benefit from it. There is further a need to clarify and evaluate the consequences of ownership to trees independently of the land they stand on.

Securing *forest* land tenure vs. *agricultural* land tenure is a critical matter, since insecure agricultural land tenure impacts local livelihoods and adds pressure on the remaining forest.

When a REDD+ policy with the aim to protect and conserve forests affects local livelihoods by e.g. limiting agricultural land, alternative sustainable livelihoods must be provided.

There are pitfalls in scaling-up community based forest mechanisms without clear linkages to needs and demands on the ground. There is a danger that future REDD initiatives can end up as institutional models with little reality on the ground.

4 CONTEXT

REDD+ is to be introduced into areas with complex conflictual tenancy claims concerning potential agricultural land and forests, but it is also an arena for introducing new interests, stakeholders and power relations.

Tenure/tenure security has been a central theme in the REDD+ debate, both when it comes to questions of efficiency – ensuring the participation of forest land users; and also equity – the fair and just distribution of costs and benefits. However the issue of tenure is a complex, locally and historically embedded, and deeply political issue.

Alongside the risks that REDD+ projects bring in terms of tenure, they also offer an opportunity to focus attention on long-neglected tenure issues in forest and forest-fringe areas. Securing tenure for forest and forest-fringe dwellers remains a huge challenge yet it is essential for the success and sustainability of REDD – in terms of carbon sequestration and the equitable distribution of costs and benefits. However, the diversity of differing tenure regimes and the unique historical trajectories of resource politics at each locality make it very difficult to present a 'best practice' guide for prospective REDD+ schemes. Rights over land do not necessarily equate with rights over trees, or indeed rights over carbon. The concept of 'resource tenure' allows for the recognition of diverse claims to different resources from the same land area, accepting the simultaneous yet distinct rights and access regimes over land, forest, trees, carbon and other potential resources such as water.

The majority of the world's forests remain under state ownership, and millions of forest-dwellers do not have recognized rights. This picture is made more complex by the existence of many informal customary regimes governing rights and access to forest resources and land, as well as by overlapping land tenancy regimes concerning land reforms, forest regulations, Indigenous territories, protected areas and rights to subsoil resources (e.g. minerals and oil). All these overlapping regimes and customary systems shape, contradict or even undermine each other. However, the issue of ownership is complex, as there can be different 'bundles of rights' that groups can exercise over certain resources in a given area. In some contexts we see that individuals may own the land, but the state maintains ownership rights over forests. Communities may gain the right to manage forest resources for subsistence, but not the right to utilize them for commercial purposes. Informal and illegal leasing contracts may also exist between communities and private actors.

5 EXAMPLES FROM ONGOING RESEARCH

Empirical cases show that each locality has a very different starting point when it comes to resource tenure, and forest management and conservation policies have varying consequences for locals and poor people.

In Ghana one can obtain agricultural user rights over land, but trees are owned by the forest commission. Although there is a system of compensation for the trees and for any crops destroyed these are not adequate. For this reason there is at present no incentive for farmers to have trees on their land, and as a result trees are surreptitiously destroyed. In Cameroon, lack of land and forests ownership rights by local communities is one of the major causes of unsustainable land management practices and accelerated deforestation. The right to trees is limited solely to the state, as well as the commercial possibilities of forest management - excluding local communities from potential benefits.

REDD+ might foster local processes that can help clarify and strengthen property and tenure rights, but it may also exacerbate local land conflicts.

In Laos, a recent policy driven reduction of slash-and-burn practices has had far reaching consequences for local communities. Limiting agricultural land within smaller areas has shortened the fallow period with a result that more people are looking for off-farm income and employment, further marginalizing many rural dwellers.

In India there are regional differences in forest management and tenure regimes across the country, and in many areas there are contested land rights. The recent Forest Rights Act has been set out to correct the 'historical injustices' done to tribal and other forest-dwellers, but the implementation has been slow and uneven. Forestry in India has increasingly looked towards the potential for community involvement in the management of forests. Joint forest management is seen as having the potential to increase conservation whilst attending to livelihood needs, although there are many criticisms of the power imbalance between state and community actors.

In the state of Uttarakhand in India the unique institutions of the more autonomous *van panchayats* are being strengthened as this Himalayan state positions itself as a provider of ecological services, both nationally and internationally. The long pedigree of some of these institutions and the proven success in terms of downward accountability and conservation is being used in the development rhetoric as justification for their promotion. However, the pitfalls of scaling-up this mechanism, whose success essentially relies on being demand-led from the community, have resulted in 'paper tigers' with many institutions having no real substance on the ground. In addition, the evolving regulations are contested by critics who see power being coopted by the forest department, as well as a reluctance on behalf of the forest department to increase the boundaries of community forests, putting the viability of some of these institutions into question.

Despite these problems, the hope is that investment and focus on community forestry through such schemes such as REDD will help stimulate demand from the ground, and create space for the establishment of democratic community forestry institutions rather than being merely implementing bodies.

In Cambodia, during the Khmer Rouge regime, property records were destroyed and people were relocated across regions. In Oddar Meanchey, early migrants settled about 20 years ago and cleared land for agriculture and timber according to their abilities, i.e. with no limitations but manpower and tools. The early migrants therefore have more land which is more secure being located near the village centre. More recent migrants acquire smaller plots (if any) which are also often less secure being located further away from the village centre, where Economic Land Concessions (ELCs) often take place. There are several "levels" of land titles, such as the signature from a village chief, a stamp from the communal council and a stamp from district authorities. Even with all three, a company can take over villagers' land if the land is granted for ELCs. This can happen without warning, often involving powerful elites and the military. Compensation, if any, is insignificant and many landless villagers are left with no option than to work for hire, immigrate (illegally) to Thailand or fall deeper into poverty.

In Ecuador, ecosystem services are subject to government regulation and the benefits from carbon rights remain uncertain. Furthermore, present conservation policies and the recognition of collective indigenous territories in the Amazon also face problems due to the earlier state-promoted colonization and redistribution of lands, especially in the Ecuadorian Amazonia in the 1960s and 70s. There is currently competition for land between migrant farmers and indigenous peoples. Other indigenous groups have lost territories due to the pressure of mining and oil extraction activities. Additionally, overlapping of indigenous territories and protected areas is still a major problem. Studies in the northeastern Ecuadorian Amazon demonstrate that small farmers have maintained larger forest patches in their farms. Moreover, undemarcated borders and unclear rights over resources and indigenous territories have led to inter-ethnic conflicts. The situation is similar in Bolivia.



In recent years in Bolivia, indigenous groups have been granted formal collective rights to large territories, which imply the need to strengthen Indigenous Peoples control over the territories and the capacity to manage large areas. Illegal logging is still a severe problem, as well as the lack of control of private companies' activities within the indigenous areas. The distribution of land to indigenous groups in the lowlands has also created conflicts with peasant and migrant communities with inadequate access to land. A sense of injustice and imbalance in access to lands is voiced by many peasant organizations. The proposal from the peasant organizations and parts of the government for inspections of the indigenous territories to evaluate the use of the land has created fear in local communities that their territorial rights will be reversed.

The current Bolivian government has announced at international arenas that they will not permit funding of REDD+ activities through the carbon market and offsets nor view forests solely based on the carbon potential. Bolivia has presented an alternative funding mechanism that also acknowledges the various functions of the forests.

Indigenous organizations are calling for REDD+ funds channeled directly to formally recognized and titled indigenous territories as REDD+ projects are viewed as a possibility to strengthen much needed control of their territories and support sustainable practices. Local communities have been granted rights to manage the forest resources in their areas, and are subject to having a forest management plan for both timber and non-timber products. With the lack of state control and follow up, private actors are still the main beneficiaries. Inspections of private forest concession areas may lead to reversion of areas to the state, and the possibility for these areas to be distributed to peasants with inadequate access to land. As these are forest areas, it will be of great importance to support peasant communities to undertake sustainable forest management. The lack of compatibility of the agricultural and forest regime in Bolivia remains a problem to be solved, as the current policies prioritize the expansion of the agricultural frontier above forest protection.

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