Tenure in REDD

Start-point or afterthought?

Lorenzo Cotula and James Mayers

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Cover photo: Sarawak, Malaysia. One of the world's richest, oldest ecosystems, home to indigenous tribal and nomadic peoples who are dependent on the forest for hunting, gathering and cultivation of traditional medicines. Nigel Dickinson / Still Pictures.
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Acronyms

ALC	Amerindian Lands Commission (Guyana)
BFS	Brazilian Forest Service (Brasil)
CDM	Clean Development Mechanism
COMIFAC	Central Africa Forests Commission (Brasil)
CONAFLOR	Coordinating Commission for the National Forestry Programme
COP	Conference of the Parties
DGIS	Netherlands Ministry of Foreign Affairs
DRC	Democratic Republic of Congo
EC	European Commission
EMBRAPA	Empresa Brasileira de Pesquisa Agropecuária (Brasil)
FAO	Food and Agriculture Organization of the United Nations
FEMA	Fundação Estadual do Meio Ambiente, (State of Mato Grosso, Brasil)
FESP	Forest and environment sectoral programme (Cameroon)
FGLG	Forest Governance Learning Group
FLONAS	Florestas Nacionais (Brasil)
FMA	Forest management agreement
FPIC	Free Prior Informed Consent
FSC	Forest Stewardship Council
FUNAI	Fundação Nacional do Índio (Brasil)
GFC	Guyana Forestry Commission
IBAMA	Institute of the Environment and Renewable Natural Resources (Brasil)
IFCA	Indonesian Forest Climate Alliance
IIED	International Institute for Environment and Development
ILG	Incorporated land group (PNG)
ILO	International Labour Organisation
INCRA	Instituto Nacional de Colonização e Reforma Agrária (Brasil)
ITTO	International Tropical Timber Organisation
JOANGO Hutan	Jaringan Orang Asal dan NGO (Network of Indigenous Peoples and NGOs) Hutan (Forest)
MAPA	Ministry of Agriculture, Livestock and Supplies (Brasil)
MDA	Ministry of Agrarian Development (Brasil)
MinFoF	Ministry of Forestry and Wildlife (Cameroon)
MMA	Ministry of the Environment (Brasil)
NFP	National Forest Plan (Guyana)
NGO	Non-governmental organisation
NLC	National Land Code (Malaysia)
PNG	Papua New Guinea
PRP	Prince's Rainforest Project
RAPY	Réseau des Associations Autochtones Pygmees (DRC)
REDD	Reducing emissions from deforestation and forest degradation
RNN	Réseau Ressources Naturelles (DRC)
SECTAM	Secretaria de Ciencia e Tecnologia da Amazonia (State of Para, Brasil)
SEDAM	Secretaria de Estado do Meio Ambiente (State of Rondonia, Brasil)
TFD	The Forests Dialogue
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UNOG	United Nations Office at Geneva

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Photo: Nigel Dickinson / Still Pictures

The erosion of customary rights. Logging in Malaysian forests has created conflicts between timber operators and local communities.

Executive summary

'No trees without tenure' might usefully update 'no timber without trees' – the rallying call of those who brought vital attention to rainforest sustainability in the 1980s. Resource tenure – the systems of rights, rules, institutions and processes regulating resource access and use – is key to shaping the distribution of risks, costs and benefits. While insecure tenure makes local people vulnerable to dispossession as land values increase, secure resource tenure gives them more leverage in relations with government and the private sector. Insecure or contested resource rights may also increase risk for investors – reputational risk, for example, in relation to possible tensions with local groups.

Various rallying calls are also heard in the now vibrant international debates on REDD ('Reducing emissions from deforestation and forest degradation in developing countries'), yet tenure issues have only recently begun to receive attention in these debates. REDD has emerged quickly, with spreading recognition that deforestation and forest degradation account for some 17 per cent of greenhouse gas emissions globally, and that the emission reductions needed to avoid catastrophic climate change are so large that they will not be achieved without reducing forest loss and degradation.

Given the immediate challenge of negotiating a post-2012 agreement, much debate about REDD has focused on international aspects. But whether REDD will benefit – or marginalise – forest communities ultimately depends on local to national arrangements about the allocation of benefits *within* countries. So resource tenure is key.

This report aims to take the debate forward by identifying: a typology of tenure regimes in rainforest countries and some of the challenges they present for REDD; the nature of tenure and usage rights regimes within key rainforest countries; and the issues revealed by exploration of these regimes that will need to be engaged with if REDD and related strategies are to have sustainable impact. Seven rainforest countries – examples of those likely to be major players within a REDD system – are the focus of attention: Brazil, Cameroon, Democratic Republic of Congo, Guyana, Indonesia, Malaysia and Papua New Guinea.

Overall, the rainforest countries reviewed here present great diversity of tenure contexts, and different mixes of strengths and weaknesses when possible arrangements for REDD are considered. The following table is purely illustrative:

Local control? Strength of local resource rights in policy and practice in seven countries		
	Strong local tenure 'on paper'	Weak local tenure 'on paper'
Strong local tenure 'in practice'	Brazil, Malaysia	
Weak local tenure 'in practice'	Cameroon, PNG	DRC, Indonesia, Guyana

Note to table: 'On paper' indicators are based on policy and law; 'in practice' indicators are based on evidence from available literature and the authors' opinion. The question marks are intended to emphasise the subjectivity in this assessment. It is not aimed at pigeon-holing countries but at provoking discussion.

It appears evident that many countries are ill-equipped in practice to ensure that REDD schemes benefit local people. Improvements in tenure alone will not achieve this. Tackling some of the powerful players behind deforesting activities, like destructive logging, pressures for infrastructure development and conversion of forests to agribusiness, will require concerted action on an unprecedented scale in many countries.

While specific policy developments must be tailored to local contexts, some general recommendations that deserve attention as REDD schemes are developed include:

- Shape REDD schemes to contribute to improved forest governance, not vice versa.
- Strengthen local resource rights, including customary rights.
- Ensure carbon rights are effectively established in national regulations.
- Build on practical mechanisms for cross-sectoral engagement.
- Develop effective arrangements to channel benefits to the local level.
- Connect national policy to key international thinking and requirements.
- Support learning groups for REDD and related approaches.

Effective local institutional capability, and the knowledge and preparedness to put good forestry into practice, will be essential for REDD. For this to be achievable, effective and equitable local property rights are needed. Consideration of tenure will thus need to be the start point, not an afterthought.

Introduction – to REDD, tenure and this study

Recognition that deforestation and forest degradation account for some 17 per cent of greenhouse gas emissions globally, and that there is more carbon in the world's forests than in its atmosphere (Rogner, *et al.*, 2007), has brought new attention to how forests are used and cared for. When forests are removed or degraded, by fire for example, emissions are created and carbon sinks are lost.

Yet, until recently, avoided deforestation as a climate strategy was unpopular. This was largely due to fears that:

- Emissions from forest loss are hard to measure, monitor and control (giving rise to questions of additionality and measurement).
- Benefits from efforts to reduce emissions would be short-lived (the permanence issue) and suffer leakage (reduced emissions in one place linked to increased emissions in another place).
- Focusing on deforestation in developing countries reduces pressure on developed countries to cut their own emissions.
- Including forests in trading schemes would flood carbon markets and make other types of measures to reduce emissions unprofitable.
- 'Fines and fences' approaches to forest protection would be given a new lease of life, with governments attempting to displace and disenfranchise local communities.

Thus, in practice the Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC) has provided few incentives for reforestation and none to maintain forests. To date, there has been a modest trade in carbon offsets in two types of market: the regulatory and the voluntary. A substantial proportion of the voluntary market has supported tree planting and management, but forestry has not been popular in the regulatory market because of high transaction costs (notably with the Clean Development Mechanism – the arrangement under the Kyoto Protocol for developed countries to offset their excess emissions through projects in developing countries) and other restrictions (for example, all forestry is excluded from the EU Emissions Trading Scheme).

Over 2007, recognition grew that the emission reductions needed to avoid catastrophic climate change are so large that they will not be achieved without reducing forest loss and degradation. The Stern Review on the economics of climate change noted that 'Reducing emissions from deforestation and forest degradation in developing countries' (REDD) could be a cost-effective route. So, while the above worries did not disappear, REDD became more popular. Indeed, myriad initiatives are now under way. In early 2009, an IIED review of the scene counted 144 REDD initiatives being pursued by: international financial institutions; regional development banks; United Nations organisations; developed

governments and bilateral donor agencies; developing country governments; NGOs; academic/research institutions; standard-setting organisations, private sector organisations and foundations. This tally of initiatives is likely to be surpassed very soon.

The Bali Action Plan adopted in December 2007 at the 13th Conference of the Parties (COP 13) of the UNFCCC calls for enhanced cooperation on 'policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries'.[1] REDD has consequently been mainstreamed in negotiations for the post-Kyoto regime. REDD is different in scale to CDM – with rewards accruing nationally or sub-nationally rather than the smaller scale project-based approach. But recourse to national sovereignty is likely to mean that any international provisions about forests and development in a UNFCCC agreement are limited. Possible government roles would seem to be as: seller; buyer from a sub-national devolved payment system; or regulator and/or broker. In any case, high levels of central coordination will be important – strong and fair rules and institutions, macroeconomic and agricultural policies in tune with forest policies, effective monitoring – and issues of tenure at local level will be critical (Mayers, *et al*., 2008).

Various options for the design of REDD are on the table. The choice of funding mechanisms has implications for the resultant policy architecture, and the impact this will have both on emissions and on the rights of local and indigenous communities. Some parties, including the 'Coalition for Rainforest Nations' (with Papua New Guinea in a leading role and Cameroon and Democratic Republic of Congo in its ranks), advocate market mechanisms primarily based on carbon trading. Others, notably Brazil, advocate a strictly donor compensation fund-based approach (Dooley, *et al*., 2008). The majority of country proposals to the UNFCCC are in favour of a mixed approach, including India, Central Africa Forests Commission (COMIFAC), the EU and Norway (Parker, *et al*., 2008). And most proposals suggest that countries with large rainforest resources stand to gain most from actions to reduce forest clearance within their jurisdiction.

Much debate about REDD has so far focused on international aspects – and rightly so, given the need to negotiate an effective and equitable post-2012 agreement. But whether REDD will ultimately benefit – or marginalise – forest communities depends on local to national arrangements about the allocation of benefits *within* countries. While hopes for some are running high about the opportunities that REDD may offer to forest communities, there are also risks that REDD schemes may result in governments, companies, conservation NGOs or speculators carving up forestlands, and pursuing forest protection approaches that marginalise rather than empower forest people (Griffiths, 2007).

1. Decision CP.13 1.b.iii, http://unfccc.int/meetings/cop_13/items/4049.php

Resource tenure – the systems of rights, rules, institutions and processes regulating resource access and use – is key to shaping the distribution of risks, costs and benefits. Secure tenure gives local people more leverage in relations with government and the private sector. Insecure tenure, on the other hand, makes them vulnerable to dispossession – which could be a major concern if REDD increases land values and outside interest.

Photo: James Mayers / IIED

Time to cut this out? Logging in West Africa.

Insecure or contested resource rights may also increase risk for investors, for example through heightening concerns about reputational risk in relation to possible tensions with local groups. Of perhaps greater importance may be the risk of uncertainty in delivering REDD commitments with unresolved tenure issues or local hostility – and the lack of legal protection against such non-delivery. Both of these types of risk might limit private sector involvement in REDD.

Yet tenure issues have only recently begun to receive attention in international debates about the future shape of REDD – largely due to civil society pressure. Indeed, in terms of country submissions to UNFCCC to date, only from one country – the tiny island nation of Tuvalu – has there been a proposal to make community-managed forests or indigenous peoples' rights a binding part of a REDD agreement. While recent research has started fleshing out some of these issues (see, for example: Griffiths, 2007; Peskett, *et al*., 2008; and Robledo, *et al*., 2008).

REDD was hotly debated at COP14 in Poznan, Poland in December 2008, but with few concrete results. The Indigenous Peoples' Caucus on Climate Change joined forces with various NGOs in an effort to generate agreement among parties on the need to recognise the rights of indigenous peoples and local communities in any future REDD regime, including human rights instruments such as the UN Declaration of the Rights of Indigenous Peoples (UNDRIP), and procedural rights such as the right to Free Prior Informed Consent (FPIC). But the final statement of the COP was weak in this regard, recognising only '...the need to promote the full and effective participation of indigenous and local communities'.

Along with recognition of local rights, many other issues – such as those on financing mechanisms, on definitions (what is a forest?, what is deforestation?),

and on monitoring requirements – are still unresolved. Whether resolution is achieved in time to enable a REDD agreement to be concluded at COP15 in Copenhagen in late 2009 is uncertain, but these issues will certainly exercise many throughout 2009 and beyond.

This report aims to take the debate forward by identifying: a typology of tenure regimes in rainforest countries and some of the challenges they present for REDD; the nature of tenure and usage rights regimes within key rainforest countries; and the issues revealed by exploration of these regimes that will need to be engaged with if REDD and related strategies are to have sustainable impact. Seven rainforest countries – examples of those likely to be major players within a REDD system – are the focus of attention: Brazil, Cameroon, Democratic Republic of Congo, Guyana, Indonesia, Malaysia and Papua New Guinea. A detailed set of country profiles outlining the context of land and forest tenure issues in each of these countries is in the Annex to this report.

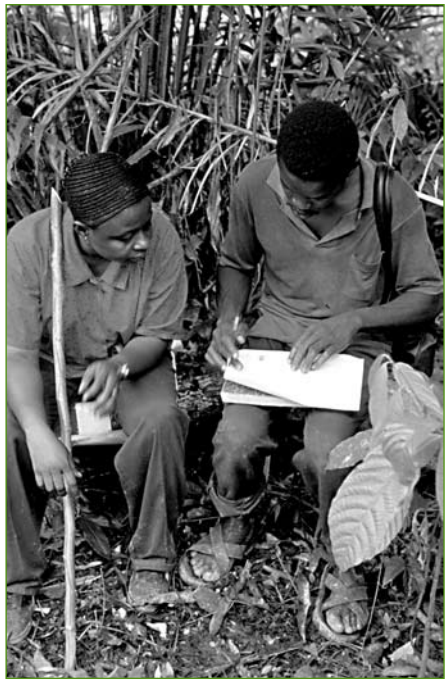

Photo: James Mayers / IIED

Who gets to decide what? Planning community forest management in West Africa.

Governance – defines what is possible with tenure

Tenure relies on, and is conditioned by, governance. Effective tenure is both impossible to achieve without supportive policy and institutional systems, and rather useless without broader institutional capacity to do something with it. For example, rights without effective sanctions against their transgression are insufficient, while institutional effort in support of wise forest management in the absence of clear forest use rights is likely to be wasted.

Forest governance can be thought of as 'who gets to decide what about forests, and how'. Even scratching the surface of these issues in many countries reveals substantial injustices, and these injustices undermine any prospect of sustainable forest management. Poor people are often excluded from participation in forest decision making, being denied their rights and having little defence from institutional disdain, criminality, abuse and corruption. Yet such situations are increasingly questioned – civic organisations in particular have grown more effective in their demands for greater public accountability.

Communities and their supporters increasingly recognise that finding the means to secure local access to, and control of, forest resources is one of the keys to rural poverty reduction. Yet securing tenure and rights of local communities is not enough. Communities need to be able to defend these rights – requiring effective sanction and disempowerment of those that can abuse and override them, and requiring the ability to develop viable enterprises and self-determination processes around secure rights.

Some of the deeper roots of forest problems lie in moves made to change rights, policies and institutions in the past, which have commonly resulted in: too much capacity and too little value-addition in wood industries; economic rents lost in the system; and disenfranchised rural communities. While this situation is depressing, it shows how dramatic policy effects can be and gives hope that, with the right changes, improvements are possible.

Could efforts to reduce greenhouse gas emissions through REDD and other forest-linked mechanisms provide new impetus to governance reform? As noted above, these efforts face considerable practical problems – establishing baselines, proving additionality, ensuring longevity, avoiding leakage, preventing market flooding, and monitoring to avoid false claims and corruption. These problems can, and are, being addressed – but there is a wider concern: trees are not just sticks of carbon, and while the old worry among foresters was that the forest sector is so complex that it will not figure in climate change regimes, the new worry is almost the opposite: that forest carbon finance is coming forward so quickly that it will not support sustainable forestry and livelihoods (Mayers, *et al*., 2008).

There is a real danger of 'carbon fixation' (a focus on emissions reductions alone) – that simple 'carbon' solutions will be imposed that do not recognise the forest complexities which are actually integral to the delivery and sustainability of those solutions. Thus, if REDD is to succeed in the longer term it will need to be nested within more integrated approaches – tackling the drivers of much deforestation and degradation that come from beyond the forest sector, and incorporating the various facets of forest-linked *mitigation* (emissions avoidance, carbon sequestration, energy substitution from biomass and biofuels, provision of low energy or carbon-neutral construction materials) as well as adaptation to climate change (species choice and silviculture to improve resilience to climate hazards and take advantage of any improved growth opportunities) (TFD, 2008).

Major forest governance thus faces challenges to make REDD work. How to avoid creating perverse incentives for forest owners? How to ensure that REDD payments go to forest managers (public, private or community) beyond state-managed protected area networks? How to target payments on forests most at risk of deforestation and degradation to ensure additionality? Above all, how to implement payment schemes in situations of weak forest governance and unclear land tenure? Each of these challenges is quite problematic.

Land tenure issues are key for a number of reasons. Unclear or insecure tenure may itself promote deforestation. Resource users may have little incentive to protect the resource if they feel they have no stake in it. Forest clearance may be a way of showing occupation where land claims are contested. In addition, tenure may influence the distribution of risks, costs and benefits of financial transfers linked to forest conservation. More secure tenure is therefore likely to give local people greater leverage in negotiations with the government and the private sector.

But, as already stressed, tenure is only a piece of a bigger picture. Even with secure tenure, governments or resource users may face pressures, or respond to incentives, to clear or degrade forests. These may include pressures to reduce poverty (e.g. through agricultural colonisation of forest areas, as in Brazil), or to address public revenue, national debt or balance of payment issues. They may also include temptations for corruption and the flouting of weakly enforced law in relation to land use. To create effective incentives for protecting forests, action to strengthen resource tenure must be combined with policy interventions to address these forces. And ensuring that local people benefit from REDD will require that governance issues beyond resource tenure be tackled – including those affecting the nature, size and direction of financial transfers.

So, understanding tenure requires an understanding of the extent to which, and the ways in which, national legislation is actually applied on the ground. It also demands understanding of other systems of resource tenure that may not be reflected in legislation but may enjoy legitimacy for local people. Under state law, tenure options tend to involve varying combinations of state or private (whether individual or collective) ownership of land and/or forests. However, in many rainforest countries legislation is poorly implemented, and people use forestlands

on the basis of local ('customary' but continuously evolving) tenure systems. These tend to present much more diverse and complex tenure options, and typically involve multiple and overlapping rights and varying blends of collective through to more individualised rights. Yet in many countries these local systems are not recognized at law, and the relationship between customary and state tenure is a major challenge in many rainforest nations. Table 1 offers a simplified 'typology' of some of these forest and land tenure types, which in practice are often more complex and overlapping – and notes some of the challenges these present for REDD.

Targeting forests at risk is also more problematic than it at first appears. It is perverse and unfair to pay landowners who are likely to clear their forests in the future but not those who have been managing theirs well. It risks creating incentives to destroy or threaten to destroy forests, e.g. farmers in Mexico and Nicaragua threatened to destroy forests when payments for environmental services schemes were about to end.

Focusing on forests at risk also greatly increases the need for penalties and monitoring compliance. Yet these are often the places most characterised by poor governance. The resources and time needed to improve such governance may simply be too great. Issues of moral dilemma also arise: focusing all efforts in weak governance situations on guaranteeing emissions reductions may entail diverting

Table 1. Some types of forest and land tenure – and some challenges for REDD

Tenure type	Countries and areas covered	Challenges for REDD and related mechanisms
State ownership State ownership of land and/or forest, based on national legislation.	Cameroon (some 97% of the country); DR Congo (all forest areas); Indonesia (most of the land); Malaysia (most forestland); PNG (less than 3% of the land).	Revenue management issues; corruption and rent-seeking; limits in implementation/enforcement capacity. Security of local land and forest use rights is a key issue – crucial to address productive use requirements where they exist (e.g. recognising conservation as a form of productive use); restrictions on commercial use (which would exclude carbon market initiatives); and safeguards in compulsory takings (e.g. public purpose, payment of compensation).
Private ownership Private ownership of land and/or forest, individual or collective, based on national legislation.	Common in Brazil, but otherwise rare or ruled out in most focus countries.	Access to ownership rights may be constrained by costly and cumbersome procedures that exclude poorer groups. The concept of 'ownership' may be ill-suited for the complex, multiple and overlapping rights characterising customary resource tenure applied on the ground. Local people may be wary of initiatives perceived to pave the way to the commoditisation of ancestral lands.

Customary systems Very diverse and context-specific. Often, resource holding by clans, families or other collective entities on the basis of diverse blends of group to individual rights, access on the basis of group membership and social status, and use through complex systems of multiple rights. Systems often cater for multiple resource uses and users, boundaries between landholdings are often blurred and overlapping.	Much of rural Africa (including Cameroon and DRC) and Southeast Asia (Indonesia, Malaysia, PNG); areas inhabited by indigenous peoples in Latin America (including Brazil and Guyana).	May embody discriminatory arrangements. May be contested, eroded by social, economic and cultural change. Customary chiefs, for example, are meant to manage resources on behalf of, and for the benefit of, their communities – but many have used their powers for private gain and to the detriment of their people. Weak or non-existent legal recognition often undermines formal value of customary rights and exposes local people to dispossession as outside interests muscle in. Customary systems are sometimes protected as use rights – but then it is crucial to address productive use requirements where they exist (see state ownership).
Devolution to local government Local governments own and/or manage forestlands.	Cameroon (on paper); Indonesia; Malaysia (federal system).	Promoting downward accountability and avoiding local elite capture. Dealing with resistance from vested interests and struggles over authority and revenues between central and local governments. Institutional capacity in local government bodies may be a major challenge.
Community forestry and co-management schemes The state transfers management rights to community-based organisations on the basis of a convention. Devolved rights are usually limited to management – land and tree ownership remain with the state, which may unilaterally terminate the management agreement.	Cameroon; Brazil; Indonesia (at an experimental scale).	Limited forest management rights do not extend to land; but experience with payments for environmental services schemes suggests that land rights may emerge as a key discriminating factor for access to REDD revenues. Even forest rights themselves may be vulnerable to termination. Dealing with the likely increase in outside interest associated with REDD would require more secure local rights.

vital efforts from other priority governance objectives – decision making over health and education, for example.

Securing climate change mitigation and adaptation from forestry is thus a complex task, especially in circumstances where few other forest goods and services are themselves secure. A combination of the following 'governance hardware' is likely to be needed: strong forest and environmental institutions effectively enforcing tenure and use rules and regulations; macroeconomic and agricultural policies that make it less profitable to clear additional forest; payments for maintaining natural forests and forest resources; strong civil society support for, and scrutiny of, sustainable forestry; and regular and systematic monitoring. Tenure is thus a critical part of the forest governance agenda to which REDD may contribute, but not the full agenda.

Land rights and carbon rights – both may be insecure

How can REDD help to improve, not exacerbate, problems with tenure and local benefit? It will be hard to determine who should be supported under REDD schemes, e.g. who should get payments, since tenure is unclear on much of the land under threat of deforestation. Experience tells us that, as the value of standing forests or forest land increases, powerful actors tend to capture those values to the detriment of the less powerful forest-dependent poor. If REDD increases value it may also increase conflicts as claimants stand to gain more by winning control. Critical dangers with tenurial uncertainty include: customary rights being violated in the interests of inward investment; community interests being locked into abusive contracts of a long-term nature; and land speculation by investors at the expense of community interests.

These issues highlight one of the central trade-offs or balancing acts required of REDD: how to balance efficiency and fairness? If the focus is too much on fairness – with smaller players that clear forests on the agricultural frontier or, in particular, indigenous and community groups who often have unclear legal claim to their land – it makes participation and significant emissions reduction more difficult. If the focus is too much on efficiency – on heavily threatened forest – it could unduly reward wealthy and often illegal cattle ranchers, loggers and agribusiness interests responsible for a large proportion of deforestation (Kaimowitz, 2008).

Clarity on who owns carbon is also key – especially if REDD incorporates a trading component. Carbon rights are a form of property right that 'commoditise' carbon and allow such trading. They separate rights to carbon from broader rights to the forest and land. They can also define management responsibilities and liabilities. They are usually registered on the land title and ideally should be perpetually enforceable or established over long time frames to ensure permanence for the buyer. Australia was one of the first countries to establish carbon rights, which are an adaptation of traditional '*profit à prendre*' rights (defined as the right to take profit from something on another person's land). These exist perpetually on the land title and define liability for re-emission, and therefore ensure permanence of emissions reductions.

But the establishment of carbon rights in New Zealand has been more problematic. In 2002, the government of New Zealand decided to retain ownership over credits or debits for carbon from plantations on public and private land. The decision, among other market factors, contributed to a significant decline in plantation establishment and also a net reduction in New Zealand's forest production area. The policy was strongly opposed by the forest industry, which argued that landowners should hold the rights to forest carbon in their forests. In 2007 the

policy was eventually reversed, with credits and associated liabilities devolved to forest owners as part of a new trading scheme. (Peskett and Harkin, 2007). This suggests that removal of carbon rights from landowners is always likely to prove inflammatory, and that it will be increasingly important for carbon rights to be defined in national regulations.

Photo: James Mayers / IIED

This carbon is mine. Fuelwood collection in Central Africa.

Continued but declining centrality of state ownership

In many parts of the world, national legislation grants the central state a key role in control over forestlands. A few years ago, White and Martin (2002) estimated that some 77 per cent of the world's forest was owned by governments. A more recent study essentially confirmed this figure (Sunderlin *et al.*, 2008). Similarly, in Africa, recent research by FAO shows that most forests remain publicly owned (95 per cent), the majority by central government (82 per cent) (Romano, 2007).

Among our focus rainforest nations, state ownership is central, for example in: Cameroon, DRC, Guyana, Indonesia and Malaysia. In Cameroon, DRC and Indonesia, all land not encumbered by a registered land title is treated as state land. Given the limited spread of registered titles due to inaccessible procedures, this in practice means that the state controls much of the land. It also means that customary landholdings, where local people assert clear rights over forestlands, are treated as state-owned (or state-controlled) land by the national legal system.

In some countries, forest services have historically been associated with authoritarian and repressive policing, although democratisation processes in the 1990s have tended to improve this. Limited government capacity to monitor compliance and sanction non-compliance is the norm across the rainforest nations reviewed here – although to different extents. Progress in enforcement has been reported in some countries (e.g. in Brazil), though enforcement still falls short of effectively inducing compliance. On the other hand, in DRC the implementing decrees needed to fully operationalise forest legislation have not yet been adopted; they are of questionable efficacy even if adopted; there are no effective sanctions for non-compliance; and government capacity to monitor and enforce is very limited.

In practice, many governments continue to prove unable to carry out the responsibilities they give themselves. Policy options inappropriate to local contexts, weak institutional capacity to implement them, and predatory, corrupt and rent-seeking behaviour all contribute to limit the effectiveness of state control.

As a result, the actual governance of access and control of forest resources generally bears little relation to the stated situation by governments. Regulations and formal institutional mandates rarely determine access and use of resources as such, but create opportunities for negotiating this. The discretionary enforcement of laws and regulations provides possibilities for monetary and political rent seeking. This depends on the possibility of invoking severe rules and punishment, the relaxation of which must be paid for. Often, it is people's lack of awareness of the extent of their property and use rights that provides scope for local

authorities to define current practices as illegal despite what is enshrined in official documents (Mayers, *et al.*, 2006).

In recent years, several countries, notably Brazil and Cameroon of the seven reviewed here, have taken steps to increase local control over forestlands. This includes introducing private ownership, whether individual or collective; strengthening local ('customary') resource rights; and devolving resource management to local government or community organisations.

As a result, despite the continuing central role of the state, the share of forestlands under local control is increasing. White and Martin (2002) estimate that at least 7 per cent of the world's forest is owned by communities, 4 per cent is managed by them, and 12 per cent is owned by individuals; and that 57 per cent of these non-state rights were transferred over the previous 15 years. This trend is confirmed by the Sunderlin *et al.* (2008) follow-up study, although this found that the rate of change is slowing. While some countries such as Peru, Bolivia, Tanzania and India (all outside the purview of our study) had made some gains for community forest control, others – notably Indonesia and the countries of the Congo Basin – had made very few.

The extent to which REDD is based on, and contributes to, local control of forests will be a critical set of issues. Not least among them is the likely changing incentive balance for central government. One of the main factors that in recent years have led central governments to devolve forest management responsibilities has been their lack of resources to make centralised management work on the ground. As new financial resources potentially become available through REDD, the protagonists of local control of forest management will want to ensure that policy reforms towards devolution are not reversed.

Private ownership and use rights – a mixed picture and a polarised debate

Private ownership of forestlands, whether individual or collective, is provided for in the legislations of Brazil, Cameroon, Guyana and Indonesia. In theory, such ownership rights, if properly supported, should give forest peoples a maximum level of control – although in all cases there are provisions for such rights to be removed by the state for public purpose (which in some countries may include commercial ventures), on payment of compensation.

But even where it is formally recognised, private land ownership may be very limited in practice. This is due to the long and cumbersome procedures required to establish private ownership, namely land registration (e.g. Cameroon, DRC). For example, the World Bank estimates that, across Africa, only between 2 per cent and 10 per cent of the land is held under formal land tenure; and this mainly concerns urban land (Deininger, 2003). In Cameroon, only 3 per cent of the land has been registered (Egbe, 2001), mainly for medium- to large-scale investment (Firmin-Sellers and Sellers, 1999), due to 'costly, cumbersome and painfully slow' process (Egbe, 2001). In practice, most forest people gain access to state-held land through customary systems of resource tenure.

In addition, land ownership may not automatically translate into tree ownership. In Cameroon, for instance, people may own trees on their land only if they plant them (i.e. private ownership of naturally growing trees is ruled out); and if they own (i.e. have registered title over) the land on which the trees are planted; as discussed, this is a very rare situation. These restrictions dramatically reduce scope for private forestry. There is also a 'circularity' problem here: a land title is a prerequisite for the planting of privately owned trees under the Forest Act; but under the Land Ordinance productive land use (e.g. tree planting) is a precondition for acquiring land ownership (Egbe, 2001).

On the other hand, private land ownership plays a central role in much of Latin America, where a main challenge is tackling land concentration through agrarian reform (e.g. in Brazil). Southeast Asia presents significant cross-country diversity in this regard: while in Indonesia the state controls most of the land, in PNG 97 per cent of the land is held by local groups under customary tenure, and state ownership is limited to less than 3 per cent of the national territory.

It must be noted that the debate about private land ownership is long-standing, complex and often polarised between opposed ideological positions – particularly between those who emphasise the alleged economic benefits of creating individual land ownership rights as a key step to promoting capitalistic development, and those who stress the specificity of local land relations (for instance, in rural Africa), the safety net function of (often idealised) 'customary'

tenure systems, and the alleged extraneity of full ownership rights in such systems. In any case, clear, long-term and enforceable use rights may offer a degree of tenure security that does not significantly differ from full ownership. Much depends on the specific content of those use rights, and on the conditions under which the state may withdraw them.

Photo: James Mayers / IIED

Are my use rights secure? A fuelwood seller in Central Africa.

In some of the rainforest nations that we review here, the protection and enjoyment of use rights over land and trees is limited in both law and practice. The security of land use rights may be undermined where legal protection is conditional on the administrative ascertainment of vaguely defined 'productive use' requirements (such as the '*mise en valeur*' required by much land legislation in Francophone Africa, including Cameroon). These requirements have also been found to create perverse incentives that foster deforestation, as forest clearance can strengthen land claims (Mendelsohn, 1994).

As for forest rights, local use rights are increasingly recognised by recent forest legislation. For instance, under Cameroon's Forest Act 1994, the local population has the right to harvest forest products outside protected areas – but only for their 'personal use'. In other words, all commercialisation of forest products is subject to licensing, irrespective of the scale of such activity. Restriction of forest use rights to subsistence use alone is a common requirement in other countries too. In practice, double standards prevail: in Cameroon and many other countries, for example, detailed forest management plans are demanded of individuals and small communities but repeatedly avoided by big companies (Mayers, *et al*., 2006).

Restrictions on all commercial activities are in practice difficult to enforce. In Cameroon, for instance, illegal small-scale commercialisation of forest products continues unabated (Egbe, 2001). But such formal restrictions do constitute a serious limitation on the content and scope of local people's rights, as a strict interpretation would exclude any monetary activities at whatever scale. Besides seriously impairing what forest people can do with their resource rights, they may also prove to be a significant legal hurdle in the context of carbon markets.

6

Customary rights and indigenous peoples – diverse systems, frequent conflict

In countries like Cameroon, Indonesia, Malaysia and PNG, customary rights are the main mechanism through which rural people secure access to forestlands. Even in countries where customary law has lost this centrality, rainforests host indigenous peoples that, to different degrees, have maintained their cultural identity and resource tenure systems, and that tend to be marginalised in national economies and decisions (in Brazil, for instance). The extent to which the customary rights of indigenous peoples and other forest communities are enjoyed in practice and protected from arbitrary interference is key to shaping local resource control and tenure security.

Customary systems claim legitimacy based on 'tradition' – yet evidence shows that they are continuously reinterpreted and adapted to respond to changing circumstances (e.g., on Africa, see Cotula, 2006). They are also very diverse, and generalisations should be avoided. Some of their recurrent features include resource holding by clans, families or other collective entities on the basis of diverse blends of group to individual rights, access on the basis of group membership and social status, and use through complex systems of multiple rights.

For a given piece of land, customary systems may cater for multiple resource uses (e.g. farming, grazing, hunting, gathering) and users (farmers, resident and non-resident herders, hunter-gatherers, women and men). In the DRC, for example, forest resources are used by Pygmy hunter-gatherers, Bantu agriculturalists, and groups that were more recently pushed into the forests by conflict or government policy. In this context, different groups may apply different customary systems. Also, the boundaries between customary landholdings are often blurred, with possible overlaps between landholdings (Hoare *et al.*, 2008).

A wealth of institutional arrangements may regulate relations between those who first cleared the land ('autochthons', incomers or migrants) and those who currently use it on the basis of rights 'derived' from an agreement with the autochthons. In some contexts, holders of 'derived' rights cannot plant trees without the approval of the 'primary' landholder (in parts of West and Central Africa, for instance).

A final point concerns the role of customary chiefs. While these are meant to manage resources on behalf and for the benefit of their communities, many have used their powers for private gain, often to the detriment of their people. This may result in conflict and loss of legitimacy of customary authorities (e.g. on the DRC, see Hoare *et al.*, 2008). More generally, in many areas customary systems are being eroded by social, economic and cultural change.

As REDD schemes are likely to be regulated by national rather than customary law, a key issue is the extent to which customary tenure systems are recognised and protected under national legislation. While some countries have recently adopted legislation to strengthen the protection of customary rights (e.g. Mali, Mozambique, Tanzania, Uganda), this is not the case for some of our focus rainforest nations where customary tenure remains widespread (Cameroon, DRC, Indonesia). In these countries, customary rights as such may not be formally protected at all – though for example in Cameroon use rights do enjoy some degree of protection.

Where the law provides for some protection, this may be significantly qualified. Under Indonesia's Basic Agrarian Law, customary land rights are legally protected only so long as customary systems still exist and their exercise is consistent with the national interest and with legislation (Colchester *et al.*, 2006). These conditions give government agencies wide discretion, which opens the door to abuse and limits the ability of local groups to exercise their land rights (Colchester *et al.*, 2006).

In addition, customary land rights may be taken for a public purpose, which as discussed may include business activities run by private corporations (e.g. in Indonesia, under article 18 of the Basic Agrarian Law and subsequent instruments; see Colchester *et al.*, 2006). This means that local groups have no right to stop land acquisitions, and all they can hope for is to obtain fair compensation. In addition, takings of customary rights may require payment of compensation for improvements alone (crops, planted trees, buildings), to the exclusion of loss of the land itself (e.g. Cameroon). These features tend to undermine the tenure position of local people.

Even the limited protection at law may not be complied with, and the literature provides many examples of arbitrary and uncompensated takings – for instance, with regard to the spread of palm oil cultivation in Indonesia, which has been accompanied by a history of repression and coercion, lack of information and loss of land rights (Colchester *et al.*, 2006; Zakaria *et al.*, 2007; Marti, 2008). In some cases, compensation was offered only for titled lands, to the exclusion of customary land rights – in violation of applicable legislation. In the eyes of local groups, this compensation tends to be seen not as the price obtained for a permanent transfer of land, but as compensation for the temporary transfer of a right to use the land, while palm oil companies understand compensation to extinguish the land claims of local groups (Colchester *et al.*, 2006).

Resource rights issues relating to indigenous peoples are particularly acute in Latin America and Southeast Asia, which compared to Africa experienced greater penetration of colonial concepts and systems of property rights at local level. But the concept of indigenous people is also relevant in Africa, particularly with regard to forest dwellers and hunter-gatherers (e.g. the Ogiek of Kenya or the Pygmies of Central Africa).

International standards exist on indigenous peoples' resource rights. The key treaty is ILO Convention 169, which recognises the 'rights of ownership and possession' of indigenous peoples, and requires states to consult indigenous peoples on the allocation of natural resource concessions in indigenous lands. Of the seven focus countries only Brazil has so far ratified this Convention; Cameroon, DRC, Guyana, Indonesia, Malaysia and PNG have not.

The United Nations Declaration on the Rights of Indigenous Peoples will also be of increasing importance in this regard. This requires the promotion of processes for the recognition of the rights of indigenous peoples to their lands, territories and resources (including carbon assets), and for the implementation of provisions on free, prior and informed consent of indigenous peoples, small forest owners and local communities.

As indigenous lands are typically held in common by relatively large communities, conventional titling processes centred on individual private property are wholly inadequate to secure local land rights. Tailored arrangements are therefore needed to cater for indigenous peoples' tenure security needs. Yet some focus rainforest nations lack specific provisions for demarcating and protecting collective landholdings (e.g. DRC). As a result, indigenous lands are seen as empty and state-owned, and are allocated to outside interests.

On the other hand, partly as a result of civil society pressure, several states have taken steps to secure the land rights of indigenous peoples. In Latin America, many countries now have legislation in place to protect their land rights to a greater or lesser extent. In Guyana, the Amerindians Act 2006 protects indigenous lands, but the government may still override Amerindians' veto for a 'public interest' (e.g. large-scale mining). Restrictions on Amerindians' use rights also exist (e.g. no more than 10 per cent of the land may be leased).

Brazil has a programme to demarcate and protect indigenous lands, but slow progress is causing frustration. In much of Latin America, fundamental problems remain, and there are tensions between indigenous peoples, government and oil, mining or timber interests, for many reasons including no or limited government consultation of indigenous peoples before resource concessions are allocated (e.g. in Guyana).

In Southeast Asia, while countries like Indonesia lack specific policy and law protecting indigenous peoples' rights, promising legislation exists. In the Philippines, for example, the Indigenous Peoples' Rights Act 1997 protects the ownership and possession rights of indigenous groups over their 'ancestral lands' and 'ancestral domains'; establishes a process for the titling of ancestral lands and domains; and provides for 'just and fair' compensation for damages, for 'informed and intelligent' participation in the formulation and implementation of projects affecting the ancestral domains, and for benefit sharing. But as a result of cumbersome procedures, of lack of capacity of the National Commission on

Indigenous Peoples, and of substantial opposition from strong vested interests, especially in the mining and agribusiness sectors (Wiben Jensen, 2004) implementation of the Act has been extremely slow. By 2003, only 27 certificates of Ancestral Domain Titles had been issued – most of which merely confirmed documents already issued under previous legislation (Amos, 2004).

Photo: James Mayers / IIED

Customary rights may not be enough. Isolated forest villages like this one are increasingly rare in West Africa.

While relations between indigenous peoples and outside interests in oil, mining, timber and agribusiness are often discussed, other issues may also exist between indigenous peoples and smallholder groups, including groups that also rely on customary rights. For example, tension between 'indigenous' Pygmies and Bantu agriculturalists were documented in Cameroon, in contexts where the Pygmies had acquired 'derived' rights to agricultural lands through arrangements with the Bantu and land pressures increased as a result of a large-scale oil pipeline project (Nguiffo and Djeukam, 2008).

Devolution to local government or community organisations – promises unmet

Devolving ownership, management and/or use rights to local governments or community organisations is another way to increase local control over forestlands. Indeed, recent policy reforms have decentralised forest management responsibilities in several countries. In most cases, this concerns management rights alone, and implementation has been fraught with difficulties.

In Indonesia, for example, legal reforms adopted after the fall of the Suharto regime (Laws 22 and 25 of 1999) devolved forest management responsibilities and greater shares of timber revenues to local governments, but resistance from vested interests, poor planning and legal inconsistencies led to struggles over authority and revenues between central and local governments, to the gradual re-centralisation of forest management, and to local conflict about resource access and revenue distribution (Barr *et al.*, 2006).

Outside the focus countries, an interesting example of devolution of forest *ownership* as well as management rights is provided by Tanzania's Forest Act 2002. Section 32 of the Act enables local governments (village councils) to establish 'village land forest reserves' that are owned and managed by the village. Tax and other exemptions provide incentives for villages to set up such reserves, and a number have indeed been established (Alden Wily, 2003; Romano, 2007). Promoting downward accountability and avoiding local elite capture, and building institutional capacity in local government bodies, are likely to be major challenges in decentralisation programmes.

In addition to decentralisation, some governments have taken steps to devolve forest management rights to community organisations under 'community forestry' arrangements. Initiated in South Asia in the late 1980s and early 1990s, community forestry has spread to other parts of the world. In Africa, Cameroon's Forest Act 1994 was one of the first in the continent to provide for community forestry. It involves the transfer of management rights on the basis of a convention between a 'village community' and the government administration (article 37 of the Forest Act). Local communities may use community forests for small-scale logging by community members themselves, or in partnership with a logging company approved by the state (Oyono, 2004; Egbe, 2001).

In Cameroon, however, devolved forest rights are limited to management. In addition, the area for community forestry is limited to 5000 hectares, which makes them very hard to manage for timber and which does not reflect areas of forest that communities perceive to be theirs. The very onerous process for setting up community forestry is also a major barrier. While forest products belong to the village community, ownership of the trees and of the land usually remains

with the state, which may unilaterally terminate the management agreement – unless the trees are planted by local resource users on legally registered land, in which case they are privately owned (article 37 of the Forest Act 1994). Once the management agreement is terminated, the state may reallocate rights over the forest concerned to third parties, including private logging operators. This seriously undermines the security local rights under community forestry arrangements.

In practice, implementation of Cameroon's community forestry programme has been plagued by slow progress, low level of genuine local control, and elite or even corporate capture. More generally, the new context of REDD would require rethinking some features of community forestry schemes. Under most such schemes, management rights do not extend to land. But experience with payments for environmental services schemes suggests that land rights may emerge as a key discriminating factor for access to REDD revenues. Even forest rights themselves may be vulnerable to termination. Dealing with the likely increase in outside interest associated with REDD would require more secure local rights.

In international debates on devolution of rights, much emphasis has been put on public or otherwise not-for-profit bodies, such as local governments or community forestry. Yet making REDD work for local people will also require recognising their entitlements and capabilities in running businesses, for instance in the form of community forest enterprises. This has implications for the content of local resource rights – as emphasised above with regard to existing restrictions on commercial use. But it also requires careful thinking about the nature of devolved institutions: traditional community representative bodies may not be the only or most appropriate vehicle for running commercially viable businesses (Macqueen, 2008).

Benefit sharing – waiting for the trickle down

The final point worth touching on is the existence of arrangements for and experience with channelling resource revenues to local people. This may include arrangements for the allocation of tax and other public revenues, or deals negotiated between forest people and outside players such as timber companies. Given the very nature of REDD schemes, benefit sharing is a key issue (Bond *et al*., 2009).

Arrangements for the distribution of public revenues exist in several jurisdictions, though the extent to which they translate into sizeable financial flows to forest people or bodies representing them (such as local governments) varies across countries. In Indonesia, the above-mentioned decentralisation policy translated into greater revenues to timber-rich districts, though more recent reforms have recentralised control over some of these revenues (Barr *et al.*, 2006). In the DRC, legal provisions for the channelling of a share of forest revenues to the local level have had virtually no impact; neither have legal requirements conditioning timber concessions to the establishment of community–private sector partnerships.

In Cameroon, the Forest Act 1994 provides two benefit sharing mechanisms: i) the allocation of forest fees paid by timber companies between local communities (10 per cent of the total amount), the relevant local governments (40 per cent) and the central state (50 per cent); and ii) the allocation of a village tax to the village communities bordering small forest concessions (Oyono, 2004). While the 10 per cent share was originally meant to be paid directly to the village level, a joint *arrêté* of the Ministry of Economy and Finance and of the Ministry of Territorial Administration (29 April 1998) required such share to be managed by local governments at the regional level – thereby effectively recentralising forest revenue allocation (Oyono, 2004). Widespread lack of implementation of these tax allocations has been reported (Egbe, 2001).

Overall, central government schemes to distribute tax benefits to local communities seem a suboptimal solution for local people (Bond *et al.*, 2009). Revenues involved are usually a minimal share of profits (upon which taxation is based) and taxes (from which the devolved share is taken). Devolving more complete resource rights to local people, in line with their own perception of the scope of their rights, and providing capacity building and support to enable local people to run their businesses directly, is likely to be more beneficial.

In this context, community–private sector partnerships may constitute a useful vehicle for enabling local people to participate in economic activities while bringing in capital, technology, know-how and marketing from outside investors. Significant experience with community–private sector partnerships exists in various parts of Southeast Asia, for instance with regard to the 'lease, lease back'

Photo: Nigel Dickinson / Still Pictures

Communities under threat. Many indigenous people in Malaysia have been arrested and imprisoned for protesting against logging concessions.

arrangements developed in PNG (Mayers and Vermeulen, 2002) and to the three-way community–government–private sector joint ventures experimented with in Malaysia (Vermeulen and Goad, 2006).

Joint ventures, lease schemes and other joint equity arrangements are among the business models that are being pursued or experimented with in different contexts to enable local people to benefit from incoming investment. A key feature from experience in some of these arrangements is secure resource tenure, giving local people an asset with which to negotiate in dealings with government or the private sector, and providing the basis for locally advantageous business models (Mayers and Vermeulen, 2002). Learning from and building on these experiences will be important to ensure that REDD benefits forest people.

Local resource rights for REDD – and the gulf between policy and practice

A summary of the local resource rights situation of relevance to REDD in the seven rainforest countries focused on in this report is offered in Table 2. As should be clear from the notes to the table, this should be taken with a pinch of salt.

Some of the differences between the 'on paper' and 'in practice' columns in Table 2 highlight the often apparent gulf between policy and practice. We have emphasised earlier that the actual governance of access and control of forest resources generally bears little relation to the stated situation by governments. Regulations and formal institutional mandates rarely determine access and use of resources as such, but rather point to the necessity of dealing with the reality of their contradictions, insecurities and perversities.

When law in practice props up existing exploitation systems, when it denies the rights and blocks the potential of poor people at local level – it is the practice rather than the letter of the law that needs to be engaged with. Governance approaches are needed that focus on fundamental rights, institutional roles, policy sticks-and-carrots, and systems by which decisions are actually implemented and monitored. The current international drive to explore REDD could do more harm than good if it does not recognise this. Rather than avoiding tenure issues because they are assumed to be intractable, those interested in developing robust and sustainable REDD schemes will need to put local tenure and social justice centre-stage.

Table 2. Key indicators of security of local resource rights for REDD and related mechanisms in seven rainforest countries

	Private (individual or collective) land and/or tree ownership allowed?		Local (incl. 'customary') use rights in place and recognised?		Indigenous peoples' rights protected?		Carbon rights defined and addressed?		Local 'voice' in land use change decisions?		Benefit sharing and revenue-allocation arrangements?		Support for local resource rights – through institutional responsibilities and capabilities?	
	On paper	In practice	On paper	In practice	On paper	In practice	On paper[2]	In practice	On paper	In practice	On paper	In practice	On paper	In practice
Brazil	Yes	Med	Yes	Med	Yes	Med	No	Low[3]	Yes	Low	Yes	Med	Yes	Med
Cameroon	Yes	Low	Yes[4]	Low[5]	No	Low	No	Low	Yes[6]	Low	Yes[7]	Med	Yes	Med
DR Congo	Yes	Low	Yes[8]	Low	No	Low	No	Low	Yes	Low	Yes	Low	Yes	Low
Guyana	Yes	Low	Yes[9]	Med	Yes[10]	Low	No	Low	No	Low	Yes	Low	Yes	Low
Indonesia	Yes	Low	Yes	Low	No	Low	No	Low[11]	Yes	Low	Yes	Med	Yes	Med
Malaysia	Yes	Med	Yes	Med	Yes	Low	No	Low	Yes	Med	Yes	Med	Yes	Med
PNG	No	Med	Yes	High	Yes	Med	No	Low	Yes	High	Yes	Med	Yes	Low

Note to table: 'On paper' indicators are based on policy and law, and 'objective' yes-or-no answers have been attempted. 'In practice' indicators entail totally subjective opinions of the authors, based on some experience, evidence from available literature and discussions with a few knowledgeable individuals. These opinions are given according to a notional scale of High, Medium (Med) or Low. The results are thus intended to be only indicative, as a start-point for discussions.

2. This refers to the existence of a specific policy framework regulating who holds carbon rights that may besold on the market (as separate from land/tree rights).
3. But there is initial experience in sites like Juma Reserve.
4. Land use rights are protected, but not customary rights.
5. Local use rights are widespread on the ground, but have weak legal protection.
6. Community forestry legislation provides some formal local voice.
7. A government initiative is set up for revenue distribution to villages and local government.
8. These are use rights, not customary rights.
9. But these rights are of uncertain legal status.
10. But these rights are undefined.
11. But there is early experience in Aceh Province.

Conclusion and ways forward

There is great diversity in tenure contexts across countries with rainforests. All have a different mix of strengths and weaknesses when possible arrangements for REDD are considered. Many, however, appear ill-equipped in practice to ensure that REDD schemes have good prospects of benefiting local people. Improvements in tenure alone will not achieve this. Tackling some of the powerful players behind deforesting activities, like destructive logging, pressures for infrastructure development and conversion of forests to agribusiness, will require concerted action on an unprecedented scale in many countries.

While specific policy developments must be tailored to local contexts, some general recommendations that deserve attention as REDD schemes are developed include:

- **Shape REDD schemes to contribute to improved forest governance, not vice versa.** There is some danger that efforts to establish strong local tenure and accountable stewardship of forest resources will be diverted or blocked by programmes that channel substantial resources into technocratic and short-term approaches to REDD. Initiatives to develop REDD should be shaped to contribute to broader efforts to improve forest governance, not allowed to manipulate policies and institutions simply to make REDD schemes work.

- **Strengthen local resource rights, including customary rights.** Where local resource rights, including customary rights, are a main resource access mechanism, there is often an urgent need to lift restrictions on commercial use by local people and to address productive land use requirements where these undermine tenure security. Within the context of REDD, forest conservation and restoration may constitute viable economic activities, and at a minimum these forms of productive use should be recognised.

- **Ensure carbon rights are effectively established in national regulations.** Initial evidence suggests that dangers lurk for local tenure security where carbon rights are separated from land tenure. Rather than allowing unclear situations to be potentially exploited at the expense of local benefit as REDD develops, it is likely to be increasingly important for carbon rights to be defined in national regulations.

- **Build on practical mechanisms for cross-sectoral engagement.** Focusing on issues and forums that ensure forestry protagonists engage with agriculture, infrastructure, trade, employment creation and other sectors is critical – to promote better harmonisation of sectoral legislation, increase control of forest resources for local landholders, and address 'circularity' issues where a certain type of land rights is required to acquire forest rights and vice versa (for instance in Cameroon).

- **Develop effective arrangements to channel benefits to the local level.** While being alert to the prospects of local elite capture, and the needs for transparency and downward accountability, such arrangements for channelling local benefits are critical. These may include drives for effective decentralisation, mechanisms for distributing public revenues, support to community forest enterprises, and partnerships between forest people, government, conservation NGOs and/or the private sector.

- **Connect national policy to key international thinking and requirements.** National and local policy processes could often benefit from much stronger connection to international developments such as those on the rights of indigenous peoples. Conversely, local priorities need to be better fed into ongoing negotiations for an international agreement on REDD (e.g. what safeguards for local resource rights are vital and what complaint mechanisms are effective).

- **Support learning groups for REDD and related approaches**. REDD needs experimentation, with active cross-context comparability, learning mechanisms and adaptive management build in from the start. Learning groups linked to REDD approaches will be critical, potentially enabling: country-specific people's diagnostics of what really works and does not; partnerships with a focus on tactical gains, including legal work, for improved governance; channels for cross-country alliance-building and lesson-sharing; counterweights to governance frameworks that are regressive in practice; transparency initiatives and research/information use.

- **REDD simply will not work unless it is locally credible; it will be undermined and overthrown**. Effective local institutional capability, and the knowledge and preparedness to put good forestry into practice, will be essential. For this to be achievable, effective and equitable local property rights are needed. In short, consideration of tenure will need to be the start point not an afterthought.

Annex. The context of land and forest tenure in seven rainforest countries

Brazil

Land and forest governance context

Brazil is a federation of 26 states, a federal district and more than 5500 local governments. The 1988 constitution promotes the decentralisation of the management of natural resources and the implementation of development programmes. With this constitution, political and tax power, as well as fiscal revenue, shifted from the central government to states and municipalities. This constitutional set-up translates into significant institutional complexity. For example, federal forest authorities such as the Institute of the Environment and Renewable Natural Resources (IBAMA) under the Ministry of the Environment (MMA) have to liaise with state-level environmental authorities such as SECTAM in Pará, FEMA in Mato Grosso or SEDAM in Rondônia with regard to forest resource management. The Ministry of Agrarian Development (MDA) and its federal body INCRA control land settlement schemes that since 1995 have been the largest resettlement programme in history and a huge issue in deforestation. Soybean production – another major source of deforestation – falls under the Ministry of Agriculture, Livestock and Supplies (MAPA) (Macqueen *et al.*, 2003).

There is extensive regulation of forests in Brazil, covering environmental impact assessments, deforestation, burning and clearing permits, property-specific and geography-specific cutting restrictions, forest management requirements and restrictions on exports of forest products (Lele, 2000), permanent protection areas, indigenous reserves, reforestation, resources exploration, among others. The first stipulation that forests should be managed came with the 1965 Forest Code,[12] but it was not until 1986 and 1989 that the concept of sustainable management was formally introduced[13] and a management plan[14] for sustainability detailed. In 2000 the Conservation Units Act was adopted.[15] Implementation is through administrative acts, which the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) and state environmental agencies are tasked with.

There are a number of policies regarding forests. These include the 2000 National Forest Programme,[16] which aims to achieve better cooperation between federal and state governments, the creation of national forest reserves, removing unwarranted incentives for deforestation and establishing state levels programmes.

12. Law No. 4.771
13. Law No. 7511
14. Order of Service 002/89
15. Law No. 9.985
16. Decree n° 3.420, de 20 de abril de 2000

Under the National Forest Programme 2000–2010, Brazil is seeking to establish 50 million hectares of sustainably managed forest and 20 million hectares of forest plantations on private land by 2010 (ITTO, 2005). The major recent advance has been the 2006 Public Forests Management Act auctioning of FLONAS (National forests) as production forests for forest concessions.

Brazilian government agencies have been active in REDD discussions. The Brazilian proposals to the UNFCCC advocate a scheme embedded in the UNFCCC framework, but outside the Kyoto protocol, because they stress that emissions reductions through REDD must be additional to Annex 1 (industrialised) countries' reductions. The proposals have advocated a strictly fund-based approach to financing REDD – with resources coming from multilateral institutions and voluntary donors in Annex 1 countries (Dooley *et al.*, 2008). Some REDD pilot programmes are now in preparation, and under way in the case of one linked to Juma Reserve in Amazonas.

Land ownership

Private ownership of land is permitted in Brazil. The right to property is guaranteed in the Brazilian constitution (articles 5 and 170). However, experience on the ground has made for a complicated system of ownership, often resulting in disputes, sometimes violent, over who has the right to use land. There is also a lack of information on land occupancy, with its quality being insufficient to formulate land policies. There is significant inequity of ownership, with very large populations living on very small plots, and around 1 per cent of the landowners control half of the country's agricultural land.

Forest ownership

The forests are considered under the Brazilian constitution to be the national wealth and a common asset for all inhabitants (article 225). The use of natural forest resources on private land is permitted, subject to the presentation of a sustainable management plan to IBAMA or state environmental agencies. There is, however, a requirement that 80 per cent of land is kept under forest as a Reserva Legal (legal reserve). Land use change, e.g. for agriculture, is allowed on a certain percentage of land. The remainder of the land must be maintained as forest. The majority of harvesting happens on private land (ITTO, 2005).

In 2006, a new law (Public Forests Management Act) was passed covering the management of publicly owned forests.[17] It covers the allocation of timber concessions for sustainable production, including for the private sector and local communities. It sets out an open and transparent process for bidding for concessions and specifies a levy of part of the bidding to go towards the newly created Brazilian Forest Service (BFS) and IBAMA.[18] It safeguards environmental, social and economic interests, which are included in the bidding process.

17. Law no 11.248 for sustainable management and production of forests
18. See article 36 of Law no 11.284/2006

Protection of (land and forest) use rights short of ownership

Ownership rights to land can be gained by 'improving' it. Historically, deforestation has been seen as one way to improve the land, thereby giving people ownership rights (Lele, 2000). The 1964 Land Statute supports this, by giving rights to people who cultivate and produce on land. In 1980, squatters were given the right to claim or possess land which they have lived in and kept in production for five years.

Management rights

Land use change decisions are made by public authorities. On private land, there is a limited right to change land use, depending on the state. For example, in the Amazon, 20 per cent of land may be converted to other uses. Use of resources requires a sustainable management plan under the 1965 Forest Code. However, it has only been since 2006 that this has been applied, with it being practically defined under Decree 5.975. Two types of logging permit exist: forest management and clearcutting. On publicly owned land, there is now a law governing the issue of concessions, to be allocated through an open bidding process (see above).

In practice, compliance with sustainable forest management plans has been poor and there has been a low level of actual implementation (although several large Brazilian companies and small community groups have helped pioneer FSC certification). Although recent law has sought to increase forest management, the requirements for the authorisation of deforestation are easier to fulfil than the more bureaucratic requirements for the approval of forest management plans and annual operation plans (ITTO, 2005). Also, in research undertaken in 2003, it was found that a significant amount did not follow the normal administrative process (Hirakuri, 2003).

It has also been noted that there is an increasing trend in community-based forest management in Brazil – between 2002 and 2008 it is estimated that the forest area designated for use or owned by communities and indigenous peoples increased by 56 per cent (Sunderlin *et al.*, 2008).[19]

Indigenous people and local communities

Brazil's indigenous population is under the guardianship of the federal government but still suffers from economic marginalisation, malnutrition, and inadequate assistance and protection. Indigenous lands and ancestral domains cover about 11.5 per cent of the total land area, mostly in the Amazon. Article 231 of the constitution recognises the right to land that Indians traditionally occupy, and states that it is incumbent on the Union to demarcate these. It also states that these lands are intended for their permanent possession, and that they have exclusive rights over the 'riches of the soil, the rivers and the lakes existing

19. And see, for example, www.wrm.org.uy/bulletin/63/Brazil.html

therein'. According to the Brazilian government, there are currently 611 indigenous lands, with 398 fully registered and a further 90 having been delimited and going through the demarcation and registration process. The total coverage is 105 million hectares[20]. The slow process of recognition and approval of tenure has caused dissatisfaction among indigenous peoples.[21] In September 2007, the Brazilian President launched a Social Agenda for Indigenous Peoples, which sets out initiatives aiming to guarantee the rights, land and development of indigenous populations. The Agenda has three programmes, which are: the Protection of the Indigenous Lands; Promoting Indigenous Peoples; and Quality of Life for the Indigenous Peoples. This includes demarking 127 indigenous lands and recovering 10,000 hectares of degraded areas.[22] To implement the objectives of Social Agenda for Indigenous People the government will invest around $220 million in the programme until 2010.

Benefit sharing arrangements

Under the 2000 National Forest Programme, there is an aim to increase people's participation in policy development (ITTO, 2005). Beyond this, however, little information has yet been obtained on formal benefit sharing arrangements.

Safeguards against non-compliance

Breach of forestry law is governed through the Environmental Crimes Law[23] and the recently enacted Administrative Penalties Act,[24] and although this has penalties including fines, warnings and prison terms, the relevant part for breaches of forestry law has not yet been regulated. These are therefore dealt with through the older National Environmental Policy Law,[25] which most commonly issues fines. Enforcement improved throughout the 1990s, with significant increases in the amount of resource allocated. But although the number of fines issued grew, the collection and settlement of these from 1996 onwards decreased. The fine system does not deter loggers or timber companies from violating regulations or stop illegal deforestation, and Brazilian authorities do not apply the proportionate system needed to increase compliance effectively (Hirakuri, 2003). Brazil has, however, been making attempts at protecting production forests though its forest conservation strategy. This has included introducing high-tech devices for timber-tracing and satellite data transfer (ITTO, 2005).

20. Funai, Ministério de Justia, at www.funai.gov.br. Checked October 2008
21. See the website of Povos Indigenas No Brasil at www.socioambiental.org/pib/indexenglish.htm
22. Embassy of Brazil in London,'*Brazilian President launches a Social Agenda for the Indigenous Peoples'* September 2007
23. Law No. 9.605/98
24. Decree No. 6514/08
25. Law No. 6.938/81

Institutional responsibilities and capabilities to support/guarantee tenure and use rights

The *Ministério do Meio Ambiente* (MMA) has the main responsibility for forests. It supervises IBAMA, which implements and coordinates national forest policy. However, it has no control over Indigenous lands, which are administered by Fundação Nacional do Índio (FUNAI). The Instituto Nacional de Colonização e Reforma Agrária (INCRA) has responsibility for land reform and land use planning.[26] Research is undertaken by Empresa Brasileira de Pesquisa Agropecuária (EMBRAPA) through its National Forestry Research Centre. There are constraints on enforcement of policy due to institutional weaknesses, inadequate capacity and lack of financial resources (ITTO, 2005; Hirakuri, 2003).

Various national and international NGOs participate in programmes and projects and contribute to raising awareness, increasing political pressure for action and providing technical expertise. The Coordinating Commission for the National Forestry Programme (CONAFLOR) was created in 2004 (a recommendation of an IIED report) to add a participative dimension to policy identification and formulation in the country. It has up to 42 representatives of major public, private and civil society interest groups.

There has been concern raised about the judiciary in Brazil. In 2004, the Special Rapporteur on the independence of judges and lawyers of the United Nations Commission on Human Rights visited Brazil and expressed concern at the inconsistencies throughout the country and the lack of access to justice for vulnerable or discriminated-against groups; there were particular issues with threats to, and violence on, judges, lawyers and prosecutors in the states of Pernambuco and Amazonas, particularly with regards to rural and environmental issues (UNOG, 2004).

26. www.incra.gov.br

Cameroon

Land and forest governance context

There have been significant governance initiatives in Cameroon in recent years – including community forestry legislation (see below) and a number of innovations in community-based natural resource management – yet major challenges remain. The viability of the industrial concession model for addressing sustainable development and poverty issues in the forest sector is increasingly questioned, while some logging concessions are making deliberate efforts to align with certification criteria, including those related to biodiversity conservation, rights of local people and indigenous communities, and timber legality. The capacity to realise the potential of a decentralised fiscal system is still weak and suffers from the absence of communal and local development plans as well as poor information flow, accountability and equity in the management of forest revenue (GREG-Forêts, 2008).

Land ownership

All land not privately registered is owned by the state. Private ownership can be acquired through productive use and land registration (Land Tenure Ordinance 74-1 of 1974). But in practice only 3 per cent of the land has been registered (Egbe, 2001), mainly medium- to large-scale investment (Firmin-Sellers and Sellers, 1999), due to 'costly, cumbersome and painfully slow' process (Egbe, 2001). Most forest people gain access to state-held land through local ('customary' but continuously evolving) systems of resource tenure. These systems vary considerably along the different ecological and socio-economic contexts of the country.

Forest ownership

The Forest Act 1994 vests all forest resources with the state but enables the creation of private ownership rights over trees – but only if a group or individual:

- plants the trees (i.e. private ownership of naturally growing trees is ruled out); and
- owns the land on which the trees are planted.

Hence two problems:

- the limited spread of private land ownership (see above) dramatically reduces the scope for private forestry;
- the circularity issue: a land title is a prerequisite for the planting of privately owned trees under the Forest Act 1994; but under the Land Ordinance 1974 productive land use (e.g. tree planting) is a precondition for acquiring land ownership (Egbe, 2001).

Protection of (land and forest) use rights

Customary land rights are not legally recognised. But those using land when the 1974 Land Tenure Ordinances came into force can continue to do so – but only if they can show productive use.

Under the Forest Act 1994, with the exception of protected areas, the local population has the right to harvest forest products, but only for their 'personal use' – all commercialisation is subject to licensing. The considerable powers of government officials to manage trees even on private fields, to impose sanctions on unauthorised logging by the field holder, and to authorise third parties to walk into the field to exploit forest resources 'engender the conviction that to plant or take care of a tree is tantamount to transferring […] some stake in ownership to the government'; as a result, local resource users have little incentive to plant trees but also to allow natural tree regeneration on their fields (Egbe, 2001).

Cameroon's Forest Act 1994 was one of the first in the continent to provide for community forestry. It involves the transfer of management rights on the basis of a convention between a 'village community' and the government administration (article 37 of the Forest Act). But devolved rights are limited to management. In addition, the area for community forestry is limited to 5000 hectares, which makes them very hard to manage for timber and which does not reflect areas of forest that communities perceive to be theirs. The very onerous process for setting up community forestry is also a major barrier. While forest products belong to the village community, ownership of the trees and of the land usually remains with the state, which may unilaterally terminate the management agreement – unless the trees are planted by local resource users on legally registered land, in which case they are privately owned (article 37 of the Forest Act 1994). Once the management agreement is terminated, the state may reallocate rights over the forest concerned to third parties, including private logging operators. This seriously undermines the security local rights under community forestry arrangements. In practice, implementation of Cameroon's community forestry programme has been plagued by slow progress, low level of genuine local control, and elite or even corporate capture.

Indigenous people and local communities

Various groups exist: Bagyeli, Baka, Bakola and Bedzang. Tensions over land have been documented between Bantu and Baka and Bagyeli (Nguiffo and Djeukam, 2008). Although indigenous people are mentioned in the constitution, they are not specifically targeted by official government policy. There is some discussion about Cameroon signing ILO Convention 169 or passing an indigenous rights law. No provisions exist on prior informed consent. Resource rights are protected as use rights if productive use can be shown; but the legal definition of productive use seems to imply farming activities or other types of 'visible' improvements, and risks undermining the position of forest people.

Benefit sharing arrangements

The Forest Act 1994 provides two benefit sharing mechanisms: the distribution of forest revenues between local communities (10 per cent of the total amount), local governments (40 per cent) and the central state (50 per cent); and the allocation of a village tax to the village communities bordering small forest

concessions (Oyono, 2004). While the 10 per cent share was originally meant to be paid directly to the village level, a joint arrêté of the Ministry of Economy and Finance and of the Ministry of Territorial Administration (29 April 1998) provided for management by local governments at the regional level – thereby effectively recentralising forest revenue allocation (Oyono, 2004). Widespread lack of implementation of these tax allocations has been reported (Egbe, 2001).

Safeguards against non-compliance

Compensation issues: For land – if ownership (registered land), duty to compensate for loss of land and improvements (Law 85-09 of 1985); if use rights – compensation for improvements alone (Decree 76-166 of 1976); for tree rights – compensation required under the Forest Act. Upon termination of community forestry, the state may reallocate rights over the forest concerned to third parties, including private logging operators.

Institutional responsibilities and capabilities to support/guarantee tenure and use rights

Despite some improvements, local returns from timber and non-timber forest products are meagre and fail to improve livelihoods significantly. Many institutional limitations in Cameroon have been exacerbated by the lack of concerted effort to address governance problems in the forest sector: i) diverging initiatives with often ill-conceived approaches to development and poverty alleviation; ii) limited contributions of forest management units, community forestry and forest conservation projects to socio-economic development and poverty reduction in neighbouring or involved communities; iii) increasing problems in the collection, management and distribution of Annual Forest Royalties and forest incomes in general; iv) increasing conflicts over forest access and benefit sharing among forest actors, and an upsurge of intra-community conflict; v) dwindling capacity and financial resources within the Ministry of Forestry and Wildlife (MinFoF); and vi) inadequate levels of training/awareness of field staff regarding governance issues.

In 2004, the government of Cameroon adopted the Forest and Environment Sectoral Programme (FESP), which aims to rise to the challenge of providing a comprehensive response to the sector's problems. It has significant donor support including through a Forest Governance Facility that is designed to support civil society organisations, elected groups, the private sector, the media and research (GREG-Forêts, 2008).

Democratic Republic of Congo

Land and forest governance context

The main legal instruments for land and forest are the 1967 Bakajika Law, the 1973 Land Tenure Law and the 2002 Forest Code. The state of implementation of these laws, however, is unclear and there are often significant inconsistencies (Counsell, 2006). Many of the decrees needed to implement the reforms under the 2002 Forest Code and 1973 Law have not been made. The transitional government was almost exclusively guided by external agencies, including the FAO, the World Bank and some NGOs, in its forest policy formulation (Counsell, 2006). Since then, some further development of application decrees has taken place, but there is almost no activity at implementation level.

Land ownership

Under the 2006 constitution, principles on land tenure are left to be determined by the law (article 123(3)). Under the 1967 Bakajika Law and the 1973 Land Law, the state owns all land. The Land Law provides for the granting of 'permanent private concessions', as well as rights over non-allocated land in rural areas. However, the relevant decrees needed to implement the Land Law have not been passed, leaving the legal situation unclear (Hoare et al., 2008).

Forest ownership

Forest ownership is governed by the 2002 Forest Code, which continues to assert state ownership over all areas of forest.[27] It states that all exploitation and use is governed by the Code. Forests fall into three broad classifications: gazetted forests, including nature reserves, national parks, urban forests, wildlife reserves and hunting areas, and form part of the states public domain;[28] other protected forests, which form part of the state's private domain; and permanent production forests. The Code also provides for:

- local community management
- protection of traditional user rights
- mandatory sustainable management plans
- revenue sharing with local governing bodies
- social responsibility clauses attached to concessions.

To date the decrees necessary to implement the Code have only concerned industrialised logging, with important elements remaining in a legal vacuum (Counsell, 2006).

Protection of (land and forest) use rights

Individuals can register a title to land, but DRC law does not recognise collective titles. In addition, it costs US$ 400 to register, and can only be done in an urban centre, making it inaccessible to many.[29]

27. Article 7
28. Article 12
29. Supplementary Report on the Democratic Republic of Congo's Periodic Report to the African Commission on Human and Peoples' Rights

The Forest Code protects local use rights, subject to compliance with the law (article 36). It also enables communities to obtain concessions (article 22) and to continue exercising previous use rights that are compatible with forest operations (article 44). Local people must be consulted before a forest can be gazetted (article 15). In gazetted forests, use rights are more limited, and include collecting dead wood, cultivating fruit and plants for food or medicine, or collecting wood for building dwellings of crafts.[30] This list excludes hunting.[31]

In practice, the relevant decrees have not been passed, which makes the Code only partly operational. Most of the current exploitation and management of forests in DRC is informal (Counsell, 2006). On the ground, there are complex and overlapping systems of customary rights over forestlands (Hoare *et al.*, 2008).

Management rights

On paper, forest management remains centralised. Under the 2002 Forest Code, there is a requirement that the Environment Minister consult local communities before a forest is gazetted.[32] As with much of the Code, however, the relevant decrees have not been made to implement this. Most of the current exploitation and management of forests in DRC is informal (Counsell, 2006).

Indigenous people and local communities

Indigenous peoples have apparent protection under the constitution[33] and customary use rights are protected under both the 1973 Land Law and the 2002 Forest Code. As previously discussed, both laws have been poorly implemented. There is no provision for prior informed consent in Congolese law and indigenous peoples have had little engagement and involvement in forest reform; several concessions exist on indigenous lands.

Under the 1973 law, any land that is not titled is governed by customary law. However, the dominant customary law in DRC does not recognise 'Pygmy' tenure rights, so the land is often seen as empty, becomes part of the state's domain and is allocated to other users.

Benefit sharing arrangements

Articles 88 and 89 of the Forest Code set up a system of '*cahiers des charges.*' This involves the concessionary forming a direct contractual relationship with the local community to improve socio-economic infrastructures. Also, the Code, under article 122, provides for 40 per cent of the annual concession fee to be transferred to provinces and territories, and that this be used for community infrastructure. In practice, there are difficulties with these arrangements. Often, concessionaries

30. Article 39
31. Articles 36–39
32. Article 15
33. E.g. article 51 requires the state to protect vulnerable groups and minorities

have a lot more power in the negotiations of *cahiers des charges*, the revenue that can be generated from community activities on the land greater, and the forest area tax being collected and distributed to regions and provinces extremely low (Counsell, 2006).

Safeguards against non-compliance

The Forest Code does not provide sanctions for non-compliance (Hoare *et al*., 2008), of which DRC has a history. Under the Code the intention was that all permits would be replaced with concessions, through a conversion process. But despite a moratorium in 2002 and a withdrawal of permits, numerous new ones for logging were issued or re-issued up to 2005. In 2008 a major review began, with a view to cancelling them or converting them to concessions. This has now been completed and the appeals process is under way. While companies have access to this, communities do not. In addition, access to the judicial system for public law disputes is difficult; the judiciary is poorly financed, financial autonomy is not provided for and corruption is prevalent (International Commission of Jurists, 2002).

Institutional responsibilities and capabilities to support/guarantee tenure and use rights

The Forest Code has started to outline the roles and responsibilities of the state, rural communities and the private sector, but these are ill-defined and capacity extremely limited. Forest policy implementation is mainly in the hands of the Environment Ministry but it too has limited capacity (Hoare *et al*., 2008). DRC is undergoing a process of decentralisation, which will impact roles and responsibilities of forestry institutions. There has been concern that the necessary provisional and local administrations do not exist or are extremely weak, and that the draft decentralisation law does not accommodate provisions on the Forest Code (Mwarabu, 2007). Also, on the local level, there is currently poor communication and understanding of the Code (Counsell, 2006).

To date, civil society, which is not well informed and has limited resources, has had limited influence. There has, however, been better organisation of NGOs in DRC recently, with the creation of the umbrella organisation Réseau Ressources Naturelles (RNN) and a number of networks of Pygmy organisations, including the Réseau des Associations Autochtones Pygmees (RAPY). In November 2003, NGOs gained increased representation on the steering committee required to approve decrees, which has met extremely rarely since then.

Although the private sector has little influence in development of the Forest Code, it has been more proactive in the formulation of implementation decrees, with the World Bank noting that pressure has been put on government from outside investors willing to start operations (Counsell, 2006).

Guyana[34]

Land and forest governance context

The annual rate of deforestation is estimated to be between 0.1 and 0.3 per cent. At present uncontrolled small-scale gold mining is one of the main drivers. However, there are serious concerns that a new highway from Brazil (Manaus) to Georgetown will result in substantial land encroachment by Brazilian ex-road builders and ex-gold miners in previously inaccessible areas.

Overall, Guyana has a comprehensive legal framework on forest governance. The forest sector's contribution to GDP has ranged from 3.2 per cent to 4.2 per cent in the period 1998 to 2008.[35] A major challenge is regulatory capture, the consequence of which is that 98 per cent of large-scale forest concessions are controlled by Asian loggers. Also, there is little relation between national laws, policies and procedures relating to the forest sector, and the practices of that sector.

The export of unprocessed logs to Asian markets is a major issue – the national industry would benefit from increased investment in local processing facilities. Official government policy to ensure value-added exports is clear (articles 14–16 and 36 of the national constitution of 1980; chapter 14 and especially section 14.IV.6.1 of the National Development Strategy for 2000–2010; numerous references in the National Forest Policy of 1997; sections NFP 500 and NFP 510–515 of the National Forest Plan); yet Guyana's log exports to China and India continue to increase (Guyana Stabroeknews, 2008).

A new Guyana Forestry Commission Act was passed in 2007 and a revised Forests Act was drafted in 1995–96. In 2008 Guyana offered to place its rainforest under the control of an international body in return for development aid and technical help from the British government (Howden and Brown, 2007), although this seems to have no significant effects on the continuation of existing patterns of resource use. Indeed, the government also stated that log exports will continue to comprise the lion's share (67 per cent) of the forestry sector (Office of the President, 2008).

Land ownership

The Guyanese government owns about 90 per cent of the national territory.[36] The 1980 constitution (section 18) provides that 'land is for social use and must go to the tiller'. Land ownership can be acquired through registration, in accordance with the Land Registry Act, or 'sole and undisturbed possession, user or enjoyment for thirty years' under the Title to Land (Prescription and Limitation)

34. Beyond specific references throughout, this profile draws heavily on Bulkan and Palmer (2008a) and (2008b) and Palmer and Bulkan (2007)
35. Data from the Guyana Forestry Commission's periodic Forest Sector Information Reports, www.forestry.gov.gy/publications.html
36. National Development Strategy 1997

Act. However, a large proportion of the population lives on the fertile coastal belt rather than in forest areas, and the coastal belt is where land registration mainly happens.

State forests cover 13.6 million ha out of a total land area of 21.5 million ha; 12 million ha or close to 90 per cent have been set aside for commercial allocation and 6.8 million have been allocated – the majority under large-scale, long-term concessions. Of those large-scale long-term concessions, 98 per cent are legally or illegally under the control of four Asian loggers.

In 1965, as a condition of independence in 1966, all the political parties agreed that Amerindian land claims would be settled. These claims were duly set out in the government-commissioned Amerindian Lands Commission (ALC) Report of 1969. But about 25 per cent of Amerindian communities remain without land title and are technically squatters on state lands. Ownership is clear on titled Amerindian village lands, but does not include water or minerals and entails no rights to prevent large-scale mining.

Forest ownership

Ownership of the permanent forest estate is vested in the state. By order, the government can declare any area of state land to be a state forest, excluding all land owned by any person in such an area (section 3 Forest Act). About 13.6 million of the 16.9 million hectares of forest in Guyana have been classified as state forests (ITTO, 2005). The remainder comprises 'other state land', private property and Amerindian lands.

Under section 5 of the Forest Act, the government can grant concessions for state forest land, which allow the lessee to use forest produce for the payment of a royalty on produce removed from it. Concession types include Timber Sales Agreements (>60,000 acres for 0-25 years), Wood Cutting Leases (20-60,000 acres for 5-15 years) and State Forest Permissions (up to 20,000 hectares for one to two years). Since 1997, the Commissioner of Forests may also grant a permit to any person to occupy an area of state forest for the purpose of exploratory operations. Exploration of state forests is defined as 'exploration for the purposes of discovering and evaluating forest produce and includes forest inventories, social and environmental impact assessments and topographic surveys' (section 2), and is a preliminary stage that may lead to grant of long-term Timber Sales Agreements.

Forest produce include timber, trees, charcoal and firewood, plants, latex, resins, gums, soil and peat. 'Forest produce from state forest shall remain the property of the State until the prescribed royalty thereon has been paid' (section 14 Forest Act).

There is no government recognition of native titles but any Amerindian community that has been in existence for 25 years can go through a formal claims procedure (section 60 Amerindian Act). Claims are settled, inter alia, on the basis of customs and traditions taking into account the duration of use and occupation.

If a claim is successful the state must issue a title under the State Lands Act (Janki, 2006). However, decision to grant the whole or part of any claim is essentially arbitrary, patronal, non-transparent, and with no effective possibility of appeal against refusal.

Protection of (land and forest) use rights

There is no right of free access to forestlands except as traditional (undefined) Amerindian Rights (section 37, Forests Act 1953). Unauthorised use (e.g. erection of buildings in state forests) is a fineable offence. Special rules exist with regard to the rights and activities of Amerindians. Today, around 2 million hectares – an estimated 14 per cent of the national territory – has been titled to the Amerindian population. The Village Council takes more of the decisions on the use and occupation of community land (sections 14, 64 and 65, Amerindian Act).

There are certain limitations to the ownership rights of the Amerindian communities. Their titles, for example, do not include rivers and river banks or minerals. Amerindian communities can veto mining activities on their land. But the state has the power to override the veto in the public interest in the case of large-scale mining projects. Communities are not allowed to dispose of the land (section 44), no more than 10 per cent of the land can be leased to outsiders and the maximum term is 50 years (section 46). Titles may be revoked in the public interest or if Amerindians transfer rights to their titles lands or parts thereof. Non-Amerindian forest dependent communities do not enjoy the rights granted under the Amerindian Act. Amerindian communities without tenure on state land are technically squatters, without rights irrespective of length of residence. The special rights of Amerindians under the Amerindian Act 2006, the Forests Act 1953 and other legislation appear to conflict with the non-discrimination provision of the 1980 constitution.

Indigenous people and local communities

The ethnic origin of Guyana's 771,000 inhabitants according to the 2002 census is as follows: East Indian 43.5 per cent, black (African) 30.2 per cent, mixed 16.7 per cent, Amerindian 9.1 per cent and other 0.5 per cent.[37] There are different forms of customary land ownership: Afro-Guyanese customs, where the land is held by the family, and the community ownership 'native title' of the Amerindians (James, 2001).

Management rights

The Guyana Forestry Commission (GFC) is tasked with managing forests in Guyana. Its responsibilities include: forest resource allocation, log tagging and product documentation system, routine and random monitoring, extension, marketing and information services, education and training, a social development programme, national inventory and continuous review of their policy and services. Concession holders have obligations under the terms of their concessions.

37. CIA, World Fact Book

Benefit sharing arrangements

There are individual initiatives to ensure that local communities and indigenous communities benefit from forest activities and related ecosystem services, for example through a Memorandum of Understanding on the Iwokrama Forest.[38]

Safeguards against non-compliance

Unclear or unmarked boundaries of indigenous settlements have led to encroachment from loggers and miners and a general sense of insecurity regarding the Amerindian peoples' status, rights and ownership. Although the extensive Amerindian land claims documented by the ALC in 1966–69 long pre-date the current forest concessions, norms prohibiting issue of concessions over state forestland claimed by Amerindians have in some cases been ignored.

The Guyana Geology and Mines Commission can hear and investigate complaints to ensure that miners comply with requirements under the Amerindian Act. However, delays and inefficiencies undermine judicial processes. Delays in judicial proceedings were caused by shortages of trained court personnel and magistrates, inadequate resources, postponements at the request of the defence or prosecution, occasional allegations of bribery, poor tracking of cases, and the slowness of police in preparing cases for trial. The delays resulted in a backlog of more than 19,000 cases. More fundamentally, presidential control of senior judicial appointments reverberates through the judicial system. In practice, the judiciary focuses on petty crime.

Institutional responsibilities and capabilities to support/guarantee tenure and use rights

Although the GFC's budget has been reduced significantly in recent years, its institutional capacity is limited by the decision of the Commissioner of Forests to save monies by reducing monitoring and shortening opening hours of key checking stations. Monitoring stations are not given maps of concessions, or annual operating plans or the mandate to monitor field performance. The Commissioner has also fired many staff with field experience. There is some evidence of a breakdown in the operation of the system. For example: corrupt acquisition of concession lands, failure of concessionaires to produce appropriate management plans and the collapse of log tracking and monitoring procedures. The GFC has considerably reduced its field monitoring capacity since 1999, and there is concern that it is no longer effective in controlling logging practice. Although not permissible without prior presidential approval, subletting of concessions is a common practice. The procedures for estimating annual allowable cut are also poorly implemented. This leads to unsustainable targeting by loggers of the few commercially valuable timber species and out of area harvesting, together with many other slippages between laws, regulations, procedures and what actually happens on the ground, largely due to regulatory capture.

38. See www.iwokrama.org/

Indonesia

Land and forest governance context

Indonesia's forest is the third largest tropical forest in the world. Between 1990 and 2000 an estimated 1.3 million hectares (1.2 per cent) was lost due to illegal logging. Major forest fires have occurred in Kalimantan and parts of Sumatra (ITTO, 2005). Expansion of palm oil is a major driver of deforestation.

In recent years, Indonesian land and forest governance has undergone major administrative changes. These changes were facilitated by the exit of President Suharto. They include decentralisation of forest management issues and efforts to address indigenous rights.

The Agrarian law of 1960 and Forestry Law of 1999 are the primary legislation for the regulation and management of natural resources in Indonesia. Conflicting provisions have been a major constraint in the application of these laws. They are mirrored by ineffective control within the government, corporations and communities in managing forest resources. Corruption is a widespread symptom of ineffective governance.

Recently launched arrangements for voluntary-market carbon credits in Aceh are pioneering the development of REDD-type arrangements on a larger scale. The Indonesian government has been an active player in REDD debates and, in setting up the Indonesia Forest Climate Alliance, were early movers in developing thinking on REDD readiness (IFCA, 2008).

Land ownership

Untitled land is under state control (article 33 of the Indonesian constitution). Cumbersome registration processes mean that most of the land is not registered, and is used under customary systems – though not all untitled land is designated as state forestland.

Forest ownership

Article 5 of the 1999 Forest Law sets out two types of forest tenure: state and titled (ITTO, 2005). The majority of Indonesia's land area has been classified as 'State Forest Zone'. This land is under the jurisdiction of the Ministry of Forestry, though some such forestland ('*kawasan hutan adat*') is managed (but not owned) by Masyarakat Hukum Adat or customary communities. According to the Forestry Law 1999, the existence of the community and its demarcated land should be declared officially by the district government.

State forests are designated for production (timber or non-timber), protection or conversion (e.g. to food crops, settlement). Its resources are the property of the state.

Protection of (land and forest) use rights

Under Indonesia's Basic Agrarian Law, customary land rights are legally protected only so long as customary systems still exist and their exercise is consistent with the national interest and with legislation (Colchester *et al.*, 2006). These conditions give government agencies wide discretion, which opens the door to abuse and limits the ability of local groups to exercise their land rights (Colchester *et al.*, 2006).

In addition, customary land rights may be taken for a public purpose, which as discussed may include business activities run by private corporations (Colchester *et al.*, 2006). This means that local groups have no right to stop land acquisitions, and all they can hope for is to obtain fair compensation. Even the limited protection at law may not be complied with, and the literature provides many examples of arbitrary and uncompensated takings – for instance, with regard to the spread of palm oil cultivation, which has been accompanied by a history of repression and coercion, lack of information and loss of land rights (Colchester *et al.*, 2006; Zakaria *et al.*, 2007; Marti, 2008).

Management rights

Legal reforms adopted after the fall of the Suharto regime (Laws 22 and 25 of 1999) devolved forest management responsibilities and greater shares of timber revenues to local governments – but resistance from vested interests, poor planning and legal inconsistencies led to struggles over authority and revenues between central and local governments, to the gradual recentralisation of forest management, and to local conflict about resource access and revenue distribution (Barr *et al.*, 2006).

Indigenous people and local communities

The government views all citizens as 'indigenous', but recognises the existence of 'isolated communities' and their right to participate fully in political and social life. These communities include the myriad Dayak tribes of Kalimantan, families living as sea nomads, and the 312 officially recognised indigenous groups in Papua. But, under the Forestry Law, communities with no land title and no official recognition as Masyarakat Hukum Adat have no right to manage customary forestlands ('*kawasan hutan adat*'); they are considered as illegally occupying forest land. This situation is leading to encroachment on indigenous lands by logging, palm oil and other concerns. Solutions being experimented with include involving local communities in forest management through collaborative forest management, social forestry or other schemes.

Safeguards against non-compliance

The government can take land for a public purpose, with due process and in exchange for adequate compensation. As mentioned, widespread violations of these norms have been documented.

Institutional responsibilities and capabilities to support/guarantee tenure and use rights

The Ministry of Forestry in Indonesia has recently signalled that the following areas should receive priority attention in its efforts to improve forest governance: building on existing local experimentation and putting in place the institutional mechanisms necessary for REDD; and capacity building for decentralised institutions (not least because responsibility for REDD implementation will need to be distributed between local and national levels) – this includes capacity building for Forest Management Units, to which authority for forest management and monitoring is devolved.

Malaysia

Land and forest governance context

At the end of 2002, the total forest area in Malaysia was estimated to be around 19 million hectares, or about 58 percent of the total land area, with the proportion of forested land being higher in Sabah and Sarawak than in Peninsular Malaysia (Shahwahid, 2006). The Malaysian timber industry recorded its best performance in 2004, bringing in RM19.8 billion (€4.2 billion) in earnings and in revenue but the people who live in and depend on the forest are amongst the poorest in Malaysia (JOANGO Hutan, 2006). Small-scale and isolated illegal logging, partial compliance with harvesting specifications, deforestation, and loss of biodiversity are key problems (Shahwahid, 2006).

Malaysia is a federation of 13 fairly autonomous states organised into three main regions: Peninsular Malaysia, Sarawak and Sabah. It has a two-tier government structure: federal and state. At the federal level policies related to forestry are coordinated between the Ministry of Natural Resources and Environment and the Ministry of Plantation Industries and Commodities. The management of all natural forests is under the purview of the respective state departments of forestry. State governments do award long-term concessions of various lengths to integrated timber companies (Shahwahid, 2006).

Land ownership

Land legislation in Malaysia falls under four main pieces of legislation: the National Land Code (Penang and Malacca Titles) Act 1963, applicable only to Penang and Malacca; the National Land Code 1965 (NLC), applicable to the rest of Peninsular Malaysia; the Sarawak Land Code 1958 (Cap 81), applicable to Sarawak; and the Sabah Land Ordinance (Cap 68). Lands alienated under the NLC and the Sarawak Land Code are held under Torrens title.

Lands under customary tenure in Peninsula Malaysia are protected under section 4(2)(a) of the NLC 1965 and the respective provisions of the NLC (Penang and Malacca Titles) Act and the Enactment on customary tenure (Cap 215). In Sarawak and Sabah, land held under native customary rights are regulated under the Sarawak Land Code (sections 2, 5, 6, 10, and 15) and the Sabah Land Ordinance (under sections 15, 18, 65, and 66 -79).

With the exception of Penang, Malacca, Sabah and Sarawak, all states in Malaysia have laws (Malay Reservation Enactments) providing for reservation of lands in favour of Malays.

Forest ownership

Except for a few thousand hectares of privately owned plantation forests, all forests are owned by the 13 federated states, which have jurisdiction over forest resources (article 74 of the Constitution; see Shahwahid, 2006). There are three separate forest governance regions, each governed by separate sets of legislation:

- Peninsular Malaysia: National Forestry Act 1984, as amended in 1993
- Sabah: Sabah Forest Enactment 1968, as amended in 1992
- Sarawak: Sarawak Forest Ordinance 1953.

All forestry operations in the country are based on either logging licences (Peninsular Malaysia) or management concession licences (Sabah and Sarawak). Logging in forest areas claimed by indigenous communities has created conflicts between timber operators and local communities, particularly in Sarawak and chiefly for the nomadic Penan people.

Protection of (land and forest) use rights

In the 2001 landmark case *Nor Nyawai & 3 Ors v. Borneo Pulp Plantation Sdn Bhn & 2 Ors*, the High Court of Sabah and Sarawak held that although various laws since 1863 had imposed restrictions on native land rights, those laws had not extinguished indigenous land rights (Sanders, 2002). In addition, the right of local people to use forestlands is legally recognised. But protected rights are usually limited to entry, harvesting of forest produce for domestic use, fishing and hunting (ITTO, 2005).

In Peninsular Malaysia, the Aborigines Peoples Act 1954 recognises the right of the indigenous Orang Asli community to use forestlands. But concerns have been raised about the ill-defined nature of these rights, and their disregard in practice (JOANGO Hutan, 2006).

On the protection of customary land rights under land law, see above. In Sarawak, state land law recognises customary land rights differently to forest legislation. However, customary rights have been eroded over the decades. Also, with the exception of the forest dwelling Penan, who have a State Cabinet Committee on Penan Affairs (set up as a direct result of mass protest and international campaigning), there is no specific department in Sarawak that handles indigenous rights per se. In addition, the effectiveness of existing arrangements to handle community grievances have been questioned (JOANGO Hutan, 2006). As a result of these problems, there are continuing conflicts between indigenous peoples and logging concession holders.

Similarly, in Sabah some permanent forests are under native claims. Forest operations in these areas require a social baseline study and mitigation measures, but problems in dealing with these claims have been documented.

Management rights

Management rights are divided between the federal and state governments. Each state has its own forestry department and other institutions to manage forestry resources. In practice, there are contradictions between federal and state policies on land, forest and the environment.

Indigenous people and local communities

Forests are still important for the livelihoods of many indigenous communities, particularly tribal communities in Sarawak and Sabah. About 700,000 people in Sarawak and Sabah derive at least part of their livelihood from the forest; some groups like the Penan are almost entirely dependent on forest produce. On the extent to which customary rights are protected, see above.

Benefit sharing arrangements

In Sarawak, Malaysia, three-way joint ventures involving companies, government and customary landowners have been in place for palm oil since the mid-1990s under a government-led scheme known as 'Joint Venture Concept', or *Konsep Baru* (New Concept). A private plantation company, selected by the government, holds 60 per cent. Rather than purchase land, the company provides financial capital for landowners to develop the land for palm oil production. The local community that holds native customary rights to the land is awarded a 30 per cent share for this investment. A Land Bank mechanism allows farmers to register their land in a bank as an asset, which enables the private company to use the land as a guarantee for bank loans. Finally, the government, acting through a parastatal agency, acts as trustee and power of attorney, and holds the remaining 10 per cent. While there may be good financial returns from Joint Venture Concept arrangements, customary landowners have raised many concerns, such as lack of real choice in whether to accept or reject the schemes, little say in negotiating the terms or length of the agreement and uncertainty over land access once the standard 60-year contract comes to an end (Bulan, 2006; Vermeulen and Goad, 2006).

Safeguards against non-compliance

Article 13 of the federal constitution provides that no person shall be deprived of their roperty save in accordance with law and no compulsory acquisition without adequate compensation.

Land ownership is guaranteed by the Federal Constitution and protected by the NLC. It cannot be compulsorily acquired unless in accordance with the Land Acquisition Act 1960, and adequate compensation is paid.

Under the Sarawak Land Code, 'any native customary rights may be extinguished by direction issued by the Minister' for a 'public purpose', or to facilitate alienation of land for the benefit of the state or the public. The Land Code requires that such compulsory acquisition be accompanied by the payment of compensation. On the other hand, people occupying state lands without permission are seen as 'squatters' and have no legal rights.

Institutional responsibilities and capabilities to support/guarantee tenure and use rights

Institutional capacity is generally recognised as fairly good. The main problem areas appear to be the relationship between different layers of government, and the protection and enforcement of local rights.

Papua New Guinea

Land and forest governance context

The main objectives of PNG's forest policy are: i) the management and protection of the forests as a renewable natural asset; and ii) using forests to achieve economic growth, employment, greater participation and onshore processing (ITTO, 2005). The main legal instrument is the 1991 Forestry Act. This Act created the National Forest Authority, which replaced the old Department of Forests. The Authority consists of the National Forest Board and National Forest Service, as well as a number of devolved responsibilities at the provincial level.

Land administration is plagued by a large number of uncoordinated laws, outdated legislation, highly centralised administration, and strong disconnect between customary law and state legislation (Armitage, 2002). A number of recommendations to remedy this situation were made by a National Land Development Taskforce in 2007, and relevant legislation is due for submission to the PNG parliament in 2009.

PNG has played a leading role in REDD debates. Indeed, it was PNG, with Costa Rica and supported by eight other parties, that first proposed a mechanism for REDD at COP11 in Montreal in 2005. PNG has gone on to be a leading player in the Coalition of Forest Nations, which proposes that carbon trading is the most viable option for financing REDD, with non-market options for financing related activities such as capacity building. The Coalition proposes a three-stage funding approach for three categories of countries – the idea being that countries move through these categories as they build capacity, with market trading (category III) starting in 2012 (Dooley *et al.*, 2008).

Land ownership

The vast majority of the land (97 per cent) is held under customary law. The remaining 3 per cent is held mostly by the state but also by private entities under leasehold or (more rarely) freehold, and is the location of most urban development and industrial activity (Armitage, 2002). Indeed, under section 4(1) of the Land Act 1996, 'All land in the country other than customary land is the property of the state, subject to any estates, rights, titles or interests in force under any law.'

Customary law is widely applied. It varies from place to place, and its application to land tenure in any particular place is subject to determination by a land court operating under the Land Disputes Settlement Act. The Land (Tenure Conversion) Act allows for groups of customary owners to agree to subdivide their land into freehold titles, but very little land has been converted in this way. Legal restrictions on the sale of customary land have not prevented the emergence of an informal land market, especially in urban and peri-urban areas.

Forest ownership

Ownership of forest resources is vested with the customary owner of the land. Commercial forestry operations cannot take place on customary land unless the government has acquired forest management rights from the customary landowner.

The main tools for forestry operations are timber authorities and timber permits. Authorities are used for specific purposes, including clearing for domestic processing, road lines and customary use where there is no Forest management agreement (FMA). They are not for harvesting intended for export. Permits, on the other hand, can be used for export. They can be used on customary land where there is a Forest Management Agreement, and over government-owned land (ITTO, 2007). Permits can only be used on FMA areas which have a minimum size of 100,000 hectares, and authorities can only be granted for up to an annual 5000 cubic metres of timber for domestic processing. In practice, the licensing system causes difficulty.

The PNG Forest Authority has the legal power under the 1991 Forestry Act to allocate concessions and monitor commercial operations on customary land where harvesting rights have been acquired.

Protection of (land and forest) use rights

Customary land rights are legally protected, and land groups may be registered under the Land Groups Incorporation Act 1974. However, there is not enough institutional capacity to implement this legislation (Filer with Sekhran, 1998). The Forestry Act prefers the formation of incorporated land groups (ILGs) as the mechanism of consent to a FMA, but there is no requirement to survey the boundaries of each group's land – hence the frequent conflict over the subsequent distribution of timber royalties.

Under PNG legislation, landowners are entitled to harvest up to 500 cubic metres of timber per year for customary use. A timber authority is required for anything over this.

Management rights

Under the Forestry Act, the government may acquire timber rights from customary owners pursuant to a FMA between the customary owner and government (section 51). Through an FMA, the Forest Authority gains a commitment from the owners to following recommended forest management practices. However, as landowning communities do not recognise rigid boundaries and controls, it is difficult to ensure the integrity and security of the forest estate (ITTO, 2005).

Indigenous people and local communities

There are over 800 indigenous tribes and languages in PNG, making it one of the most heterogeneous countries in the world. Free, prior and informed consent is not explicitly referred to by national law, but with 97 per cent of the land being governed by customary law, landholding groups must be consulted and agree to developments on their land. In practice, however, agreements are often reached with only minimal engagement and little information given to community leaders (Colchester and Ferrari, 2007).

Benefit sharing arrangements

Under the Forestry Act, forest management agreements are negotiated between the PNG Forest Authority and local landowners. Where the title cannot be vested in a land group or registered, the Authority may enter into an agreement with agents who are entitled to act on behalf of the group they represent and 75 per cent of the adult population of the group has given written consent (section 57). An FMA has to contain details of the financial and other benefits to the customary owner for the rights being granted.

In practice, customary landowners are often given only cursory consultation, and do not have enough information to participate meaningfully in the process (Colchester and Ferrari, 2007). Also, it appears that landowners are often allowing activities to take place through direct agreement with logging companies (ITTO, 2007).

Experience with community–private sector partnerships for palm oil production has also been developed. Through a 'lease, lease-back scheme', a customary landowning group registers itself and its land with government, which then provides a basis for subletting to a plantation company. There have been some concerns that the schemes are negotiated by, and in favour of, local elites. Even if these schemes have worked quite well in the oil palm sector, they are very cumbersome: ILGs have to be formed and registered; their land has to be surveyed before it can be leased to the state; the state then leases it back to the ILGs, or a landowner company approved by them, before it can be subleased to the plantation operator. There is recent evidence of the scheme being subject to political manipulation to avoid these cumbersome procedures, and roughly 1 million hectares of customary land seem to have been 'leased back' to private companies without having been properly leased from the customary owners in the first place. It is not clear whether any of this land is currently being earmarked for REDD schemes by the new leaseholders.

Safeguards against non-compliance

Under the Forestry Act, it is an offence to take part in forest activities unless registered (section 114) and holding a permit, authority or licence (section 112). Penalties include fines and imprisonment. It is also an offence to hold unlawful forest possessions, which also entails a fine or imprisonment (section 124).

However, there is a significant problem with non-compliance with forestry laws in PNG, due to the lack of effective implementation and monitoring of the laws and regulations, and lack of inadequate financial and human resource (ITTO, 2007).

Institutional responsibilities and capabilities to support/guarantee tenure and use rights

The key actor in the forestry sector is the Forest Authority, created under the 1991 Forestry Act. Its mission is to 'promote the management and wise utilisation of the forest resources of Papua New Guinea as a renewable asset for the well-being of present and future generations'.[39] There are three arms: the National Forest Board, which is responsible for advising the Minister for Forests on legislation and policy and giving directions to the National Forest Service; Provincial Forest Management Committees, which provide a forum for consultation and coordination between national and provincial governments; and the National Forest Service, the implementing arm of the Forest Authority.[40]

Problems in government institutional capacity have been documented, for instance with regard to the registration of collective landholdings (Filer with Sekhran, 1998).

A number of national and international NGOs are active in PNG, including WWF, Conservation International and The Nature Conservancy. These have taken a lead in Ecoforestry initiatives and sustainable forest management. There is also NGO representation on the National Forest Board. Section 10 of the Forestry Act was amended in 2005 (following cancellation of the World Bank Forestry and Conservation Project) to substitute a 'community' representative for the NGO representative from The Ecoforestry Forum.

39. www.forestry.gov.pg
40. ibid

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Natural Resource Issues

If poverty is to be reduced and livelihoods improved, significant shifts in policies, institutions and markets will be required to encourage sustainable natural resource management. How to go about this is a major challenge facing governments and civil society groups. Much guidance is available for farming, forestry and fisheries, but in reality livelihoods depend upon many forms of natural capital and are not amenable to sectoral interventions. This series of reports aims to present material on key cross-cutting themes of significance to many natural resource sectors, including water, soil, biodiversity, carbon and climate.

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Tenure in REDD Start-point or afterthought?

As new mechanisms for 'reducing emissions from deforestation and forest degradation' (REDD) are being negotiated in international climate change talks, resource tenure must be given greater attention. Tenure over land and trees – the systems of rights, rules, institutions and processes regulating their access and use – will affect the extent to which REDD and related strategies will benefit, or marginalise, forest communities.

This report aims to promote debate on the issue. Drawing on experience from seven rainforest countries (Brazil, Cameroon, Democratic Republic of Congo, Guyana, Indonesia, Malaysia and Papua New Guinea), the report develops a typology of tenure regimes across countries, explores tenure issues in each country, and identifies key challenges to be addressed if REDD is to have equitable and sustainable impact.

Further information and resources on REDD can be downloaded from www.iied.org

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