

Expert Meeting: Options for addressing tenure under REDD+

Carbon rights: a central tenure consideration for REDD+

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FAO, Rome, Monday 25 February 2013





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I. What are carbon rights?

- Carbon rights have been defined in **different ways** by international experts.
- Forest carbon rights can be defined as **intangible assets** created by **legislative and contractual arrangements** that allow the **recognition of separate benefits arising from the sequestration of carbon in the forests** ¹.
- Carbon stock in the forestland should prove to be **additional**. Therefore ownership of carbon rights also carries **obligations** and **risks**.



II. Why clarity on forest, land and carbon tenure is fundamental to achieve REDD+

- A more **stable** enabling **environment** that **guarantee** **minimum and appropriate forms of legal protection to contracting parties** would stimulate **investments in REDD+ projects**.
- However owning an intangible resource such as **carbon** poses **challenges for traditional property law systems**. The identification of **land ownership** is **not always sufficient to ensure ownership** over the **carbon** stock in a **forest**.
- Therefore 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**.



III. Areas for legal reform to support REDD+ and improve tenure: A special focus on carbon rights

- Most REDD+ countries do **not specify ownership of sequestered carbon**.
- **Ownership, or substantive use rights on land and forests** might be the **first step** for determining the **entity** most likely to have **rights to carbon sequestered by forests**.
- Presumably **forest owners** and right holders will be the **direct beneficiaries of carbon rights** generated by REDD+ activities, therefore clear land tenure rights should be ensured.



- **carbon rights** cannot compare with a right embodied in a piece of land, in the sense they **are generated by an investment** (or a payment for keeping or enhancing the carbon stock) that can be made either by the owner or by a tierce;
- carbon rights are emerging as a new component in the ‘bundle of rights’ that constitute property rights over forest and land.



a) Carbon rights and tenure reforms

- In **many tropical countries**, where **forests** are **state property**, the **access** to the forest occur **through forest concessions**.
- a **government** might opt for an equitable sharing of the benefits between the parties - the **investor** and the **forest user rights** (the communities)
- **the recognition of carbon rights** to the real **forest user rights** would pave the way for the **eventual recognition of tenure rights of communities**.



b) Formal recognition of customary law: communities' rights and land

- The duality between the *de facto* recognition of key property rights and the *de jure* public ownership could **call for land tenure reforms** in countries where forests remain under state ownership.
- For example **contracting for PES** on well identified territories with local dwellers will lead to ***de facto* recognition** of some **property rights** to the **forest land** (effective management and exclusion rights).



c) Communities' rights and carbon rights

- In recent decades, there has been a trend towards **decentralization** of national governments and **devolution of natural resource** management to **local communities**, thus encouraging **tenure reforms**.
- Do the local people have the capacity to effectively participate in, and benefit from REDD+ activities?

In Vanuatu, the Land Leases Act (Chapt. 163 – rev. 1988) provides for the creation and transfer of leases for a period of up to 75 years. That leased land will therefore be registered under the Land Leases Act and the boundaries and 'proprietors' of the customary land recorded.

In Mexico, 70-80% of forest land is classified as social property, owned by ejidos and communities.

In Tanzania, the tenure system is centralized although the Forest Act (2002) recognizes certain communities rights associated to participatory forest management



IV. Lessons learned on REDD+ legal preparedness

Forest, land and carbon rights

Key Points

- A legal definition of carbon rights might be required to secure carbon ownership of individuals or groups involved in activities of forest carbon sequestration;
- Rights to carbon or benefits that flow from carbon should be distinguished from the rights to the carbon credit itself (or the title to the carbon emission reductions) in defining forest carbon rights;
- Definitions of carbon rights may differ between States in relation to their association with the land (individual versus communal/ private versus public);
- Different options can be considered at national level to facilitate carbon transactions, and will affect potential needs to separate property rights on carbon from other ownership rights (interests) on forestlands (e.g. usufruct rights);
- Forest carbon rights may be granted through registration in land administration systems;
- Registries and certificates might include the rules concerning the control over transferability, inheritance, extinction, subdivisions of carbon property rights.

**Thank you for
listening!**