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Options for addressing tenure under REDD+

UN-REDD PROGRAMME

Expert Meeting Report

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Acronyms

CSO	Civil Society Organization
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
FPIC	Free, Prior and Informed Consent
NGO	Non-governmental Organizations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UN-REDD	United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries

Executive summary

Addressing tenure under REDD+ is becoming increasingly urgent. There is particular urgency to gain greater clarity over tenure and the recognition of customary rights to land by indigenous peoples and local communities. In all national REDD+ programmes, secure land and forest tenure are intrinsically linked to transparent, fair, participatory and negotiated decision-making processes, the debate on carbon rights and benefit sharing at national and local levels.

There are time limits, as well as limits in the availability of financial and human resources, for the readiness phase of REDD+. Questions have arisen as to what specifically can be done on forest and land tenure through REDD+ programmes in order to achieve legal assurances of clarified and secured tenure rights for eventual results-based payments.

The meeting was offered as a platform for an exchange of views and experiences from the perspectives of United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), the Forest Carbon Partnership Facility (FCPF), the country representatives, non-governmental organizations (NGOs), international organizations and donors. Participants shared knowledge from their particular context. The meeting emphasized small group interactions, which fed into a plenary session and provided insights into opportunities, common understandings and diverging views. This format allowed participants to build relationships and learn with and from each other.

The meeting was designed to focus on tangible actions to be taken in REDD+ countries. It was structured around the following topics with each topic building on the other:

- vision statements on tenure in 10 years from now;
- options and scenarios for addressing tenure under REDD+ (national, subnational, local and landscape levels) based on a debate on challenges and opportunities;
- REDD+ stakeholders in tenure work (rights, roles, responsibilities); and
- priorities for tenure work and key issues for action.

Given the complexity involved in reducing deforestation and forest degradation, the tenure work under REDD+ needs to adopt a broad approach to ensure tenure rights, improve existing legal frameworks for land and forest tenure and address in particular the recognition of customary rights of local communities and indigenous peoples in situations where the state owns the land.

There was broad consensus that actions at all levels (national, subnational, local and landscape) play an important role in integrating REDD+ into overarching rural development programming. One of the major challenges identified was overcoming the difficulties in communication and cooperation between the various levels, including between the local and national levels, and across different sectoral administrations (e.g. land, agriculture, forestry and environment).

Large uncertainties also remain in assuring that REDD+ implementation will be an inclusive and participatory decision-making process, and whether Free, Prior and Informed Consent (FPIC) can successfully address this concern. In particular, the rights and responsibilities of REDD+ beneficiaries at the local level should be further analysed. Lessons that have been learned should be evaluated and fed back into national deliberations in order to enhance the policy environment, improve the legal framework for secure tenure and make the institutional functioning of land administration effective at all levels.

To establish sound carbon rights and benefit-sharing systems for local communities and indigenous peoples, tenure must be addressed at the national level through improved policies, institutional development in land administration and legal frameworks.

In this regard, the participants called for strategic approaches, as opposed to project interventions in selected sites, as the way to address sustainable forest management and climate mitigation actions in a consolidated manner. Conservation and rehabilitation efforts are essential elements for reducing deforestation and forest degradation. It is also of utmost importance to address agricultural development, which is one of the major drivers of deforestation and forest degradation.

Tenure work under REDD+ is seen as a broad and in-depth process that affirms rights and responsibilities, enhances accountability and contributes to the fight against corruption. Consequently, the Committee on World Food Security's *Voluntary Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests* will play a prominent role in informing and framing the work on tenure under REDD+.

Through REDD+, important momentum has been generated for reforming and improving sustainable land and forest management. While the context in every country is different and requires different approaches to tenure, the common challenges and opportunities identified during the meeting are striking, in particular with regard to the participation of stakeholders, communication and cooperation, and legal frameworks.

The meeting identified three areas for improvement or prerequisites for action:

- the reform of the legislative framework of tenure and national land-use plans, and the institutional development of tenure administration and capacity building;
- the establishment of benefit-sharing systems and assurances of transparency and compliance with existing and emerging laws and regulations; and
- the effective participation of stakeholders, particularly local communities, and enhanced communication and cooperation among stakeholders at the global, national and local levels.

The next steps to be taken include the establishment of a network or a 'community of practice' to continue the exchange of views and experiences from various countries. The Food and Agriculture Organization of the United Nations (FAO) will also use the results of this meeting to analyse different ways for moving forward with the necessary tenure work until June 2013. This work will prepare for targeted support to countries and be carried out in collaboration with the Forest Carbon Partnership Facility (FCPF) and other partners engaged in REDD+.

The key tenure issues and actions to implement REDD+ effectively can be summarized as follows:

- tenure reform and efficient registration systems, which include the recognition of customary and traditional tenure rights;
- institutional development of land administration, improved communication and dialogue, and greater awareness and mainstreaming of REDD+ in development planning;
- the need to strengthen local governance, including (building on existing or if necessary the creation of) dispute-resolution mechanisms;
- effective and transparent systems of participation and negotiation processes, particularly of local stakeholders for sustainable REDD+ implementation, and in areas such as tenure reform and the legal empowerment of stakeholders;
- the creation of a REDD+ and climate change entry point for building momentum for tenure reform, clarifying carbon rights and establishing a benefit-sharing system;
- the establishment and implementation of a comprehensive and convincing tenure support programme by national and international actors adopted to country-specific needs;

- the facilitation of an exchange of views on carbon rights between the REDD+ community and the tenure community;
- the development of a tool to map tenure rights and practices at the community level, as a first step towards increased recognition of customary tenure and as a way to implement REDD+ while legal reforms may be underway;
- multistakeholder engagement and collaboration in the areas of tenure administration, forest management and climate change mitigation.

1. Context

Addressing tenure under REDD+ is becoming increasingly urgent. There is particular urgency to gain greater clarity over tenure and the recognition of customary rights to land by indigenous peoples and local communities. In all national REDD+ programmes, land and forest tenure are intrinsically linked to the debate on carbon rights and the equal sharing of benefits at national and local levels. The Country Needs Assessment has been carried out by the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), and the Forest Carbon Partnership Facility (FCPF). The assessment has analysed REDD+ countries' requests for tenure to be prioritized within REDD+ readiness activities. It suggests immediate actions with regard to "legal frameworks to support the implementation of REDD+ and to resolve land tenure and carbon rights issues in the REDD+ context which is needed in virtually all existing and nascent REDD+ country strategies".¹

The term 'tenure' is meant to include land tenure in general, forest tenure and access to natural resources (soil, water, vegetation). According to FAO: "Tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. Land tenure is an institution, i.e., rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints."²

There are many reasons why addressing tenure is a key task for successful REDD+ implementation. Among other things it will help to:

- clarify and secure tenure;
- recognise and protect local communities' and indigenous peoples' rights and traditional ownership of forests;
- identify REDD+ responsibilities and beneficiaries, and put carbon-benefit systems in place;
- improve data collection and sharing of information and experience;
- establish conflict resolution mechanisms and better manage risks associated with REDD+ implementation;
- improve sustainable management of forests and take account of the multiple functions and benefits of the forests and other ecosystems;
- contribute to climate change mitigation; and
- avoid displacement of emissions from one area to another (leakage).

¹ *Country Needs Assessment for REDD+ Readiness among UN-REDD and FCPF Members Countries*, UN-REDD and FCPF, October 2012.

² Quoted from Country Needs Assessment.

All countries are engaging since long in the regularization of tenure. In particular, many countries are working toward turning customary and traditional law into statutory legislation and legislative frameworks. The Committee on World Food Security has endorsed the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (hereafter referred to as the Voluntary Guidelines). These global guidelines were designed to support “governments to safeguard the rights of people to own or access land, forests and fisheries”³ and can provide a strategic tool for addressing specific REDD+ related tenure issues.

The expert meeting, ‘Options for Addressing Tenure under REDD+’, was initiated to bring together experts and representatives from governments, civil society organizations (CSOs), the private sector and international organizations to debate the broad range of possibilities for working on tenure in order to become ready for REDD+ results-based payments in a realistic manner.

2. Objectives and goals:

The overall objectives on the expert meeting were laid out in the concept paper and included:

- exchange experiences and increase understanding among REDD+ countries and other stakeholders on how to address tenure;
- raise awareness of the Voluntary Guidelines and consider how they can be used for REDD+ implementation;
- clarify tenure issues and the scope of work on tenure under REDD+ with consideration given to a range of country-specific contexts;
- discuss and evaluate options on how to address tenure under REDD+ according to the respective settings in forested areas (e.g. national parks, conservation areas, gazetted forests and concessions) and in productive landscapes where forests are considered along with agriculture and water management as part of territorial development;
- clarify interactions with other land-based activities, and how they affects roles, rights and responsibilities, in particular at the interface of REDD+ and agriculture; and
- discuss, clarify and prioritize actions for strengthening the policy, legislative and institutional frameworks related to tenure at national, subnational or local levels for the successful implementation of REDD+.

To facilitate debate during the expert meeting and to focus on the outcomes, the following goals were agreed upon:

1. clarify tenure issues in the context of REDD+ implementation; and
2. understand constraints and opportunities, and identify realistic actions to address tenure under REDD+.

³ FAO Media Centre, 11.5.2011: <http://www.fao.org/news/story/en/item/142587/icode/>

This expert meeting is only one action undertaken by FAO in the context of the UN-REDD Global Programme. It will be followed up by an analysis of tenure issues to be tackled under REDD+ and through targeted country support to strengthen the engagement of governments, civil society, the private sector and international organizations. This follow up is outlined in Section 6.

3. Concept and process

The concept of the meeting was to discuss and better understand the options and scenarios for work on tenure under REDD+ at all levels and elaborate the challenges and opportunities. Vision statements, challenges and opportunities were the three main topics of the meeting. The deliberations on possible options or scenarios at the national, subnational, local and landscape levels were central to the discussions. Stakeholder engagement, their rights, roles and responsibilities were seen as the critical element of an enabling environment for work on tenure.

The meeting was a platform for an exchange of views and experiences from the perspectives of country governments, NGOs, international organizations and donors. Each participant shared diverse knowledge from a variety of contexts. The meeting's design emphasized small group interactions. The results of the small groups were then fed into a plenary session. This gave participants the time to build relationships and learn with and from each other. The process prioritized peer-to-peer interactions in order to allow the diverse groups to reflect on tenure issues and develop a common understanding about the options or scenarios for addressing tenure under REDD+. Presentations were kept short and a brief background paper provided some structure for the meeting in a way that did not create any biases and kept discussions open. The agenda is attached as an annex to this report.

Presentations included:

- Governance of Tenure - introducing the *Voluntary Guidelines on the Responsible Governance of Tenure and Land, Fisheries and Forests* by Paul Munro-Faure (FAO);
- Carbon Rights - a central tenure issue by Francesca Felicani-Robles (FAO); and
- Options and Opportunities by Ann-Kristin Rothe and Christian Mersmann (FAO).

After the initial plenary session, four working groups were formed to look at tenure under REDD+ in greater depth and with specific country perspectives. Groups included a mix of participants from governments, CSOs and international institutions. One group was provided simultaneous interpretation to support participation in Spanish and French. The small group conversations helped to bring to the surface different country needs and motivations, and identify patterns of similar issues across countries. All groups worked on the same topics and with the same structure.

After some debate on the time frame, the availability of human and financial resources and emerging priorities for tenure work under REDD+, the participants drafted key conclusions, noted the main questions and listed action points to be undertaken in their groups. Documentation through the metaplan method sought to capture the inputs and identify wider patterns. All records are transcribed and made available on the UN-REDD work space.

Key insights from day two were shared back in plenary. Final group work was shared in a participatory 'Gallery Walk' process on day three, during which each group was able to hear about the other groups' work and provide their feedback and questions in sequential, small group rounds. Final statements and arguments building on group work results were captured in plenary at the final session. These statements provided the basis for the list of next steps to be taken either by participants or supporting institutions.

4. Participants

The expert meeting benefited from a great variety of participants. Eleven UN-REDD country representatives from Asia and the Pacific, Central America and Africa attended the meeting. Also participating were representatives from CSOs and indigenous peoples' groups. Tenure and REDD+ experts from international organizations, UN-REDD, UN agencies and the World Bank also took part.

The contributions from country representatives' were critical to the workshop's success. Their views, broad knowledge and long experience can be drawn on to gain a better understanding of the existing tenure situation, risks, needs and opportunities in their countries. The active participation in the working groups and plenary sessions reflected the high relevance of tenure and the need to create a space for exploring the various concerns countries have in relation to REDD+ implementation and tenure. Many stakeholders feel that these needs should be addressed first, before moving forward with the establishment of carbon-benefit systems.

Participants from UN-REDD, UN agencies and the FCPF acknowledged these concerns. However, some participants expressed doubts as to whether any substantial progress could be made in tenure work under REDD+ and suggested that priorities should be given to other activities.

Tenure experts from international organizations made it clear that they could share a wealth of knowledge about tenure and hoped that countries would inform them about their core concerns, specifically in relation to REDD+ implementation.

Indigenous peoples representative expressed their views on the risks of excluding indigenous peoples and local communities from REDD+ benefits. They stated that there is a strong need for better information systems on tenure and awareness of REDD+. They see REDD+ as an instrument that could create both losers and winners and that participation by all concerned stakeholders has to be ensured.

Hopes were raised by all participants that REDD+ can help in recognizing and protecting indigenous peoples and local communities' rights and collective and customary tenure systems.

The added value of this workshop was generated through the communication between these various actors, all of whom are crucial to REDD+ implementation, whether at the local, national or international levels. The diversity of participants was maintained in the constellation of groups in order to create genuine dialogue between experts and representatives from governments, CSOs and international organizations.

This exchange contributed to creating a common understanding about the tenure issues that need to be resolved in individual countries' cases and in global venues. At the same time, this exchange revealed important gaps and questions remaining that the tenure and REDD+ community must address. The network created by the expert meeting will continue to inform the debate on next steps to be taken. Unfortunately, the potential participants from the private sector were not available to join the expert meeting.

5. Key outcomes and findings

The presentation ‘Carbon rights - a central tenure issue for REDD+’ opened the expert meeting. Participants stated that it is crucial to have clarity on how to define, register and transfer carbon rights in order to minimize risks for investments into REDD+ and ensure equitable benefit sharing among stakeholders, in particular local communities and indigenous peoples. Participants stressed the direct links between secure tenure and carbon rights.

Participants suggested that there might be various ways for defining and allocating carbon rights based on existing national tenure systems and their reforms. They underlined that before defining carbon rights, the effects of the REDD+ instrument on existing tenure rights have to be understood and managed. While all tenure reform and the country-specific definition of carbon rights remains a responsibility for the respective governments, international organizations should support this process, particularly with regard to equitable benefit-sharing systems.

Many questions remained unanswered including: How can carbon rights be defined, and are carbon rights a means or a prerequisite to access carbon markets? Do carbon rights relate to flows or stocks of carbon? What are the technical implications and needs that carbon rights registration require? There is a need for a debate on realistic goals and expectations for allocating and securing carbon rights. Transnational approaches that build on particular ecosystems (e.g. the Amazon basin) were mentioned as an alternative to national carbon rights policies.

The brief discussion on carbon rights and carbon tenure informed the deliberations on the options to address tenure under REDD+. In this regard, the four working groups addressed the following issues:

- vision statement(s) on tenure in 10 years from now;
- challenges and opportunities for tenure work;
- options for addressing tenure under REDD+ scenarios and different levels of interventions;
- REDD+ stakeholders in tenure work (rights, roles, responsibilities); and
- priorities for tenure work and key issues for action.

The key outcomes of the expert meeting as provided by the participants are summarized below. In Annex 2, the details of the key outcomes per working group as presented at the Gallery Walk and during the plenary session can be found. All material compiled during the meeting can be found on the UN-REDD workspace. It will be used for the further analysis of approaches to tenure work under REDD+ (see section 6: Next Steps).

Vision statements:

The vision statements of the four working groups ‘Ten years from now’ focused on the commitment of countries to sustainable land and forest management through the REDD+ readiness process and REDD+ implementation. Secure land tenure rights and a functioning land registry are the prerequisites for the meaningful participation of local communities and indigenous peoples, and the sharing of benefits from REDD+ revenues.

‘REDD+ gets green light’, an imagined headline from a newspaper in 2023, expressed the aspirations that investments into REDD+ will be secured through a well established system and will help achieving significant mitigation results. At the same time, participants envision REDD+ as a tool to foster sound governance over land, forests and natural resources, enhance the participation of stakeholders and improve inter-institutional cooperation.

Challenges and opportunities:

Participants stated that REDD+ can build momentum for development, in particular for rural development. According to many stakeholders, REDD+ should not be restricted to gazetted or classified forests, but should include agriculture and landscape rehabilitation. Mainstreaming and integrating REDD+ into overarching development agendas as an integral part of environmental policy making represents both a tremendous challenge and an outstanding opportunity. This is especially true since in some countries efforts to provide information that explains the concept of REDD+ have not yet reached all the relevant ministries and important national stakeholders.

Greater security for investments into REDD+ can be gained by supporting local governance to strengthen land-use planning and by clarifying land, forest and natural resources titling, access and user rights in REDD+ project areas. This should also help prevent conflicts among or within local communities, and between local communities and governments. Tenure rights remain unclear and insecure where customary and traditional rights to land are not recognized in legal tenure frameworks. To work effectively, land administration, including official registration of land titles, needs adequate human resources, appropriate financing and legal clarity. Institutional development should include participation and communication systems to facilitate collaboration between stakeholders, particularly between governmental institutions and local communities and indigenous peoples across sectors.

Secure tenure rights are the foundation for minimizing risks for investments into REDD+ and for sharing the benefits from carbon finance. REDD+ is not just about carbon sequestration, but about the multiple benefits derived from sustainable forest and land management. For this reason, REDD+ should play a catalytic role in fostering the necessary reforms to achieve secure allocation of tenure rights. If reforms are envisioned, they have to make sense in the context of and be embedded in existing rural development agendas and environmental policies, as well as in land and forest tenure administration and systems for payments for environmental services.

There are high expectations in REDD+ for increasing tenure security, improving the participation of local communities and indigenous peoples, generating new financial flows and sharing benefits. Managing these expectations is a major challenge for REDD+. Meeting these expectations depends on national and subnational decision-makers and their political will to support REDD+ and take necessary steps to prepare for implementation. The more REDD+ and related opportunities are known and understood, the higher the chances for successful participation and support for local governance schemes. The slow and complicated processes relating to governance of tenure and land registration would greatly benefit from an effective catalyst like REDD+. There are four fundamental links between tenure and REDD+. These links, which put the emphasis on the need to invest into tenure administration, law and institution, are:

- insecure tenure as a driver for deforestation and forest degradation;
- secure ownership as an incentive to sustainably manage land, forest and natural resources;
- secure and clarified tenure titling for benefit sharing systems;
- establishment of negotiation mechanisms to ensure participatory decision-making; and
- the assessment, management and conflict resolution related to tenure and future REDD+ investments.

Scenarios and levels of interventions

To improve the overall governance of tenure and to secure the legal framework, initiatives carried out at the national level are crucial. Local and national levels are strongly connected because the customary and traditional land rights of local communities and indigenous peoples are often in conflict or overlap with statutory law.

Giving customary and traditional rights statutory legal recognition should neither undermine local tenure systems nor simplify them. Capturing their complexity and specificity is necessary for avoiding conflicts among local communities and ensuring that REDD+ is connected to the reality on the ground and receives wide acceptance. It is also crucial to safeguard the rights of local communities when investments into REDD+ are increasing.

Safeguarding local tenure rights would be easier, if programmatic approaches are chosen as opposed to isolated projects. Programmes would operate at both the national and local levels. Effective communication and meaningful participation would guarantee that these programmes are sufficiently transparent and accountable. This would avoid mismanagement and corruption and ensure that they are geared toward having a real impact.

Land registration and land administration as well as land-use planning may be easier at the subnational level where governmental institutions have a better overview of resources and their management. The REDD+ process is already advanced in countries where tenure is well managed and administered. REDD+ stakeholders can draw important lessons from these countries and learn about enabling factors and the challenges encountered.

Landscape approaches involving several decentralized local authorities may be complicated and require more communication, coordination and consensus-building processes. As a consequence, they would require additional capacity building and financial resources. In case of programmatic approaches, these costs would have to be included in the programme budgets.

Stakeholders: their rights, roles and responsibilities:

National governments and their ministries (land, forest, agriculture, environment, finance, local authorities, internal affairs) and national parliaments have the responsibility to develop policies and legal frameworks; monitor and improve enforcement of laws and regulations; and prevent overlapping rights and land uses. At the national level, it is crucial to ensure that operational policies, tenure laws and regulations permit and facilitate REDD+ activities, including the allocation and registration of tenure rights. Institutional development for land administration should be based on clear mandates that have been agreed upon with decentralized authorities.

In most developing countries, property rights over natural resources are vested with the government. The state reserves its right to receive or distribute benefits generated through environmental services. This means that secure tenure rights regulations are only the first step towards securing carbon rights and creating benefit-sharing systems. National governments and parliaments need to be proactively engaged in REDD+ to make it work successfully.

The private sector is a key player in REDD+ implementation. This sector includes investors, brokers, certification systems of enterprises or natural resources management, the forest and agriculture industry, commercial large-scale land owners and REDD+ investors. The private sector entities that are working on the basis of legal assurances have an interest in clear tenure systems with associated rights, including the right of exclusion.

Risks of investment remain high where tenure policies and laws are not strong or their enforcement is weak. Countries with weak law enforcement capacity or insufficient legal frameworks would need to find ways and means to determine the increased responsibilities of companies and local communities that are obtaining benefits beyond a minimum requirement for forest and land management.

If REDD+ requires demarcation of project-specific geographic boundaries, the government has the responsibility to ensure that participatory approaches and community-based decision-making processes are followed. Customary and traditional tenure systems need to be integral part of the overall legal framework and be given official statutory recognition.

Attention must be paid to effectively include women and youth in consultation processes and tenure work under REDD+. Because women use the forest differently and have a different vision of sustainability, a gender-sensitive approach is needed. The rights of women under REDD+ are to be respected, and FPIC to be applied in all communities.

Systems of social networks and methodologies for effective participatory approaches have been tested successfully and can be applied in the context of REDD+. FPIC and the application of Social and Environmental Principles and Criteria should assist stakeholders to maximize participation in establishing future benefit-sharing systems, minimizing risks and avoiding conflicts. Municipalities responsible for the execution of tenure reform and compliance with laws and regulations clearly need more human resources and financial capacity to execute their tasks in land administration and registration.

Priorities and key issues for action:

The priorities and key tenure issues for implementing REDD+ effectively and working on readiness for investments in REDD+ can be summarized as follows:

- tenure reform in view of allocation of land and access to tenure rights and effective use of ongoing tenure reform processes;
- functioning, transparent and efficient tenure rights registration systems;
- recognition of customary and traditional tenure rights and an understanding of the complexity of customary practices and rights in statutory law;
- the need to strengthen local governance, including (building on existing or if necessary the creation of) conflict-resolution mechanisms;
- effective and transparent systems of participation and negotiation processes, particularly of local stakeholders for sustainable REDD+ implementation, and in areas such as tenure reform and the legal empowerment of stakeholders for;
- institutional development of land administration and interministerial dialogue with all sectors engaged in rural development and climate change adaptation and mitigation politics;
- awareness raising and mainstreaming of REDD+ in development planning, communication and information flows and the capacity building of all stakeholders;
- making REDD+ and climate change an entry point for building the momentum for tenure reform, the clarification of carbon rights and the establishment of a benefit-sharing system;
- the establishment and implementation of a comprehensive and convincing tenure support programme by national and international actors adopted to country-specific needs;
- the facilitation of an exchange of views on benefits, benefit-sharing and carbon rights between the REDD+ community and the tenure community;
- the provision of tenure governance and impact assessment tools, where needed;

- to map tenure rights and practices at the community level, as a first step towards the recognition of customary tenure and as a way to implement REDD+ while legal reforms may be underway; and
- the development of capacities in relation to land, forest and natural resource tenure rights, ownership, use and management registration, in particular the information sharing through different registries with regard to REDD+ relevant information gathering and registration at national level.

6. Next steps

The results of the expert meeting will be documented comprehensively and placed on the workspace of the UN-REDD website, which will be made accessible for all participants of the expert meeting.

The workspace will be used to compile a collection of literature, reports, analysis and other documents relevant to tenure under REDD+. FAO's Legal Service is implementing the project 'Legal Preparedness for REDD+', and the documentation and links to other sources on carbon rights will be included in this project.

Using the results of the expert meeting, FAO will finalize the analysis of countries' needs to address tenure under REDD+. The analysis will cover the challenges and opportunities, the scales and levels of interventions, and stakeholder engagement. It will be completed in June/July 2013 and will lead to targeted country support under the UN-REDD Programme in close cooperation with FCPF in 2013 - 2015.

As called for by participants, FAO is now working to establish a 'community of practice' for work on tenure under REDD+. The community will be linked to the new online forum on legal preparedness for REDD, which is accessible to the public on the UN REDD workspace at <http://bit.ly/REDDlaw>. This community will serve as a forum to prepare and inform the work on tenure under REDD+. Its work should also follow and respond to the progress being made in implementing the Voluntary Guidelines.

7. Annexes

Annex 1: Programme and Agenda

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Programme and agenda

Expert Meeting: Options for Addressing Tenure under REDD+

25– 27 February 2013

Rome, Italy - FAO HQ

Day 1	Monday, 25 February	Philippines room
12:00	Registration of participants	
14:00	<p>Welcoming address Xiangjun Yao, Director, Climate, Energy and Tenure Division, FAO</p> <p>Introduction and Concept: organizing & framing our meeting, Nancy White – facilitator</p> <p>REDD+ and UN-REDD Tina Vahanen – Team Leader, Climate Change Coordination and REDD+ Team in NRC, FAO</p> <p>Governance of tenure Introducing the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security How do the Voluntary Guidelines link to REDD+? Paul Munro–Faure, Principal Officer, Climate, Energy and Tenure Division, FAO</p> <p>Carbon Rights – a central tenure issue for REDD+ Francesca Felicani-Robles, Legal Service, FAO</p> <p>Reflections by participants</p>	
15:45	Coffee break	
16:00	<p>What we know so far: options and opportunities Ann-Kristin Rothe and Christian Mersmann</p> <p>Q&A and Dialogue</p>	

16:45	Organization of four working groups and Day 2 goals
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Day 2		Tuesday, 26 February	Philippines room & seminar rooms
8:30	Introduction to Day 2 group work		
9:00	Working Group Session 1: Problems and opportunities: collection of specific tenure visions and issues related to REDD+ implementation		
10:30	Working Group Session 2: Tenure implications under different options for REDD+ implementation		
12:30	Working Group Session 3: What Stakeholders would need to be involved in tenure work under REDD+ at country level?		
13:00	Lunch break		
14:00	Working Group Session 4: Exploring stakeholder involvement under various options: discussing rights, roles and responsibilities		
15.15	Break		
15:30	Working Group Session 4 continued		
16:45	Close of the day in plenary (Philippines room) Group Insights of Day 2 and Preview of Day 3		
17:30	Reception in the Aventino room, FAO HQ		
Day 3		Wednesday, 27 February	Seminar rooms & Philippines room
8:30	Introduction to Day 3		
9:00	Working Group Session 5: What are realistic goals for the tenure work in the context of REDD+ implementation? Prioritize actions for strengthening the policy, legislative and institutional frameworks related to tenure under REDD+.		
10:30	Coffee break		
10:45	Presentation of working group results – “Gallery Walk”		
12:30	Lunch break		
14:00	Discussion and reflection on working group results – moderated plenary discussion What are our key conclusions and prevailing questions?		
15:30	Coffee break		
15:45	Elaborating our conclusions and recommendations – moderated plenary discussion		
16:30	Closing remarks Tina Vahanen – Team Leader, Climate Change Coordination and REDD+ Team in NRC,		

Annex 2: Detailed key outcomes per working group

The four working groups (Red, Blue, Green and Yellow) addressed the list of topics as suggested by the facilitators:

- vision statement(s) on tenure in 10 years from now;
- challenges and opportunities for tenure work;
- options for addressing tenure under REDD+, scales and levels of interventions;
- REDD+ stakeholders in tenure work (rights, roles, responsibilities);
- priorities for tenure work; and
- key issues for action.

The key outcomes are summarized below for each group (red, blue, green and yellow). The details of the key outcomes of the working groups at the Gallery Walk and during the plenary of the expert meeting are also presented. Other material compiled during the meeting will be used in the further analysis of approaches to tenure work under REDD+ (see section 7: Next Steps).

Key Outcomes of Working Group Red

Vision statement(s) on tenure in 10 years from now:

Although countries had varied ideas of how it could be accomplished, all of them envisioned that REDD+ could lead to successful reforestation, the protection of existing forests and the reduction of emissions.

For many, the allocation and protection of secure tenure rights are an integral part of this vision. Participants emphasised that it is important that this vision also includes the distribution of carbon benefits and specific consultation and participation mechanisms, such as FPIC for local communities and indigenous peoples. Avoiding overlapping claims and the reforestation of monocultures, such as palm oil plantations, was also part of the participants' vision of REDD+. Progress made under REDD+ in 10 years from now would also be measured by the extent to which REDD+ has become a potential means for resolving tenure conflicts and improving living conditions.

Most of the group members shared these visions for REDD+. When it came to examining country-specific contexts for REDD+, participants had diverging views on the tenure implications of these visions and revealed individual country needs and concerns. Some countries, including Costa Rica and Mexico already have a well advanced system to register tenure rights and they foresee completing this registration process. Major concerns regarding access to land ownership, the titling of deprived people and the efficiency of land allocation and registration procedures were expressed.

Challenges and opportunities for tenure work

Countries whose tenure registration systems are already relatively advanced highlighted that specific REDD+ tenure conflict-resolution and arbitration mechanisms would have to be created to ensure fair, just and transparent carbon-benefit distribution systems. REDD+ projects or programmes continue to face major challenges in areas where tenure rights are unclear, unjust or contested. For these reasons, many group members had shared concerns about issues of communication, transparency and even basic awareness about REDD+ at all levels, particularly for those responsible

for implementing REDD+ and for stakeholders that might be directly or indirectly affected by REDD+ interventions.

The recuperation of degraded soils was also mentioned as a challenge that needs to be tackled under REDD+. The fact that this issue was raised demonstrates that REDD+ is seen not only as an instrument to be applied to gazetted or classified forests, but also used for the sustainable management of other parts of the ecosystem, including agricultural landscapes.

Many expect that REDD+ can draw attention to financial needs and channel financial resources to sustainable forest management and even to the sustainable management of land in general. However, there is also awareness about the risk of setting expectations too high and setting the stage for disappointment later. There are hopes that REDD+ will lead to an increased respect for and compliance with international human rights obligations, but these expectations may overestimate the scope of the REDD+. On the other hand, there is the prospect that REDD+ projects and programmes can contribute to and inform national tenure administration, legislation and policy making.

To address the key challenges of mainstreaming REDD+ into development and environmental policy-making, many participants called for inter-institutional cooperation. This cooperation is needed for example to integrate tenure systems into territorial and landscape governance. The greatest remaining uncertainties concern not only what effects REDD+ will have at the local level and how collective and community rights can be secured and protected, but how to establish a link from the local to the national and global level.

Several participants added that REDD+ would need to take into account the multiple benefits that forests offers. REDD+ has to make sense in terms of the culture and needs of the people who are living in forest areas where REDD+ will be implemented. Many participants underlined the importance of recognizing indigenous peoples' and local communities' customary or traditional tenure rights and establishing a system to record those rights to clarify tenure. REDD+ could be an opportunity to push for action on addressing these needs.

The core question is "Who should and can benefit from REDD+?" If the recognition and protection of communal land rights is not ensured, the risk increases that resources transferred designated for the benefit of the larger population will be usurped by a few individuals of higher social status (elite capture).

Countries with defined and clear ownership, registered tenure rights and a functioning institutional framework see REDD+ implementation as an immediate opportunity for carbon benefits. Countries with major challenges in the establishment of secure tenure are highly concerned about basic tenure rights.

Scenarios (options for addressing tenure under REDD+)

There was a general debate as to whether or not the REDD+ constituencies should talk primarily about national legislative approaches, or consider other options or scenarios at subnational and local levels. Most of the countries, particularly small countries (Costa Rica, the Republic of Congo and Panama) consider the national approach as the most important due to the requirements for policy making, legislation and the administration of the state.

All levels, from national to local, will be important for REDD+, but some might have more relevance in a specific country context, such as the centralized or decentralized administration of tenure.

For large countries (federal states), the subnational level could be more important for REDD+ implementation and the monitoring and prevention of leakage. Transformational change can occur at this level and can inform actions the national level. Adopting the landscape approach has the potential to create synergies between different institutions and actors involved with tenure.

Stakeholders in tenure work (rights, roles and responsibilities)

A key task is the harmonization of public policies and institutions related to land, forest and natural resource tenure with national REDD+ objectives. At the subnational and local levels, participation and conflict-resolution mechanisms should be established and support for technical and capacity development should be provided by the state. The state is also responsible for the formulation of operational policies and the development of guidelines regarding tenure.

The government could also create a more enabling environment by reducing transaction costs and creating social networks responsible for land, forest and natural resource tenure administration. Municipalities are responsible for land use and spatial planning and the execution of tenure reforms.

Priorities for tenure work under REDD+

Many participants shared the following three priorities:

- clear and just allocation of land titles and access to tenure rights;
- functioning, transparent and efficient land forest and natural resources tenure registration systems; and
- the need to recognize and capture the complexity of customary practices in statutory law.

The institutional arrangements are needed to prepare and implement REDD+, improve tenure security and ensure efficient coordination between all relevant stakeholders and sectors. Another key priority is the acquisition of the necessary technical knowledge and creation of tenure information systems that are compatible at national level.

Key issues for action

The reform of legislation and the establishment of carbon benefit systems and their integration into national legislation are goals for a number of countries. However, many of these countries are not yet ready for carbon-benefit systems. Progress still needs to be made in building the skills and capacities of politicians, legal experts and REDD+ experts working in areas such as administration, arbitration, conflict resolution and mediation and negotiation. Strengthening inter-institutional and inter/intra-ministerial coordination is also a key issue for action from the identified priorities. Some countries considered the adoption of a rights-based approach to addressing tenure issues as the appropriate path for action.

Key Outcomes of Working Group Blue

Vision statement(s) on tenure in 10 years from now

The group agreed on two main issues for their vision of REDD+ in the future. REDD+ should foster renewed commitment to sustainable forest management, secure tenure and benefit sharing. Trade agreements and issues of political economy should support REDD+ implementation in other sectors, such as agriculture and economic development.

Scales and levels (based on options)

When discussing and clarifying tenure, efforts should be made to ensure that customary tenure systems and rights are not undermined or simplified. These systems should be captured in their complexity. They should not be included into statutory systems if their specificity would be lost. These systems and rights should be recognized.

Actions at the national and project (local) levels form the primary axes in the implementation of REDD+. At the national level, the primary focus is on ensuring consistency in the revisions of the legal framework on tenure. Many laws, including land and forest laws need to consider the specific conditions that REDD+ might impose. Laws need to review and harmonize REDD+ objectives. National monitoring and evaluation activities require specific national indicators for assessing achievements in tenure regulations.

For REDD+, the subnational level share many similarities with the national level. They have similar institutions, but respond specifically to decentralized authorities. Countries need to decide on levels of REDD+ interventions based on their governance structure. In some countries, the carbon market operates at the subnational level where there may be a better land registration system. In each country, there is a need to harmonize different systems. Experiences show that in many countries with a federal system, different settings of land administration in different states cause major problems in areas such as accountability, transparency and the equality of benefit sharing.

The specific nature of landscape development, agriculture and rural development needs to be fully considered. If the priority is to maximize climate change mitigation, working at landscape level might be the best option. A broader approach that uses REDD+ to support sustainable land and forests management calls for a different set of actions. Tenure and governance are complicated and involve many different authorities. For this reason, major coordination and communication efforts as well as high level political will and commitment are required.

REDD+ stakeholders: their roles and responsibilities

National governments, government ministries (land, forest, agriculture, environment, and internal affairs) and parliaments have the responsibility to develop policies and legal frameworks, monitor and improve enforcement of laws and regulations, and prevent overlapping rights and land uses. They also need to ensure that the laws and regulations permit and facilitate REDD+ activities, including the allocation of tenure rights.

Sovereignty and property rights over natural resources in most developing countries are vested with the government, and the state reserves its right to receive benefits. Many governments do not sufficiently oversee natural resources management and often do not know what natural resources the country has nor how they are being used by local people.

The private sector is a key player in REDD+ implementation. This sector includes investors, brokers, certification systems of enterprises or natural resources management, the forest and agriculture industry, commercial large-scale land owners and REDD+ investors. The private sector entities that are working on the basis of legal assurances have an interest in clear tenure systems with associated rights, including the right of exclusion. Risks of investment remain high where tenure policies and laws are not strong or their enforcement is weak. Countries with weak law enforcement capacity or insufficient legal frameworks would need to find ways and means to determine the increased

responsibilities of companies and local communities that are obtaining benefits beyond a minimum requirement for forest and land management.

If REDD+ requires demarcation of project specific boundaries, the government has the responsibility to ensure participatory approaches and community-based decision-making processes, especially where customary tenure systems remain unclear. Stakeholders without rights to benefits who are living around REDD+ areas should be consulted and informed about REDD+ implementation. There needs to be agreement or clarity as to who controls what and who has access to REDD+ resources and resource rights. The capacity of local communities should not be underestimated. However, they may need to know more about REDD and their rights. FAO can create a dialogue about REDD+ at the local level and provide capacity development.

Attention must be paid to ensure women and youth are included in the consultation processes and tenure work under REDD+. Because women use the forest differently and have different visions of sustainability, a gender-sensitive approach is needed. The rights of women under REDD+ are to be respected, and FPIC to be applied in all communities. Each person should get their share of benefit. People who live beside REDD+ areas may be entitled to some benefits.

Activities (based on key issues for action)

Promoting transparency has been given priority as the first key activity. The goals are to expose corruption and ensure transparency in transactions. To ensure transparency, benefit-sharing systems need to have an independent auditing process. How to ensure transparency in benefit-sharing remains a key question.

The participants concluded that harmonizing the land, forest and agricultural tenure laws and policies is a key action required for addressing tenure concerns related to REDD+. This is as important as the harmonization of multi-level tenure systems existing in one country.

Participants suggested communities should be converted to legal entities in order to recognize their rights. This would include the mapping of rights and claims in a participatory manner and the creation of a local-level dialogue to clarify tenure. These actions can feed into national legislation and more formal registry systems. However, this requires a step-by-step approach with a long-term perspective.

Capacity building is a key activity for action. Setting up forestry units at the subnational level, developing and strengthening capacities, and reinforcing existing institutions to share benefits and funds are indispensable and urgent actions. These activities also include the facilitation of coordination between sectors.

Clarifying the political economy of tenure, which might determine or affect the success of potential tenure reforms is a key issue for action at the national level. It also constitutes an overarching responsibility at the international level. By the same token, REDD+ constituencies need to consider the legal, strategic and operational dimensions of carbon rights, either as collective or individual rights.

Key Outcomes of Working Group Green

Vision statement on tenure in 10 years from now

“REDD+ gets green light” – this imagined headline from a national newspaper in 2023 expressed the group members’ vision that REDD+ would become a fully settled instrument of sustainable forest and

land management and carbon mitigation with financial flows and distribution systems clearly identified. This vision includes the reform of land, forest and natural resource tenure in ways that improve the livelihoods and spurs economic growth in local communities.

Challenges for tenure work

Despite major progress made in the UNFCCC negotiations on REDD+, the mechanism is not yet fully agreed upon. In particular, issues around REDD+ finance remain unresolved. Achieving the vision statement, would require the establishment of a global framework for REDD+ implementation, based on the experiences gained so far.

The necessary integration of REDD+ into more overarching development programmes, such as forest development and rural development, means that the tenure work should be addressed through a broad, comprehensive approach. Knowledge on the synergies between existing tenure work and REDD+ is still relatively limited. However, it is certain that REDD+ would benefit from enhanced work on tenure regulations. At the same time, REDD+ builds momentum for more engagement in tenure.

Participatory approaches for the recognition and registration of land, forest and natural resources tenure rights, and for resolving tenure-related conflicts are fundamental requirements for successful REDD+ implementation. When engaging stakeholders, the power relations within communities, and between communities and investors, needs to be considered.

Opportunities for tenure work

REDD+ does not simply mean 'carbon benefits'. REDD+ should catalyse sustainable land and forest management. Halting deforestation and forest degradation is a joint agenda of the forest sector and climate change mitigation.

There are a great number of legal issues around land and forest tenure to be clarified for REDD+ interventions. Of particular importance are the combined issues of tenure and carbon rights in remote areas where tenure is not regulated or informally managed and not well known outside the local community. Just as forest inventories are carried out under REDD+ for all forest resources in a given country, tenure work under REDD+ needs to be seen as a contribution to the necessary revision and improvement of the legal tenure framework .

Scenarios (based on the options to address tenure under REDD+)

Addressing tenure under REDD+ requires interventions at all levels and within all administrative settings (national, subnational, local and landscape).

Project approaches, the current practice in many countries under REDD+, should be replaced by programmatic approaches that link national, subnational and local levels in terms of policies, legislative reform on tenure and other issues. These approaches should also be connected to institutional development, capacity building and meaningful participation.

Ongoing projects under REDD+ and other mitigation actions should inform policy development and institutional and legislative change through an evidence-based, bottom-up approach. Linking the levels this way could ensure transparent, accountable and impact-oriented work on tenure. Potential bottlenecks could be clearly identified.

Stakeholders (rights, roles and responsibilities under REDD+)

Methodologies, tested approaches and enhanced frameworks for participation exist under REDD+ initiatives and in other processes. REDD+ needs to apply them and make sure that these processes comply with the principles and instruments of FPIC and promote the Social and Environmental Principles and Criteria for maximizing benefits and avoiding risks related to REDD+ implementation.

Major problems with regard to tenure work include the lack of communication between the various levels, in particular between national and local levels and between stakeholder groups. The lack of capacity in terms of human and financial resources, and the limited knowledge and experience in tenure work under REDD+ hampers the fulfilment of roles and the taking of responsibilities. REDD+ hosting institutions (line ministries and agencies) and institutions of land administration need to be closely linked by effective channels of communication and systems of cooperation.

Priorities for tenure work under REDD+

Based on the shared visions and the identified approaches to REDD+ as a catalyst for a broader agenda of sustainable forest and land management, a process of mainstreaming REDD+ into programmes and policy agendas of tenure, agriculture, forestry and rural development seems inevitable to achieve a holistic and comprehensive approach to REDD+ and to harness the political and strategic momentum generated by REDD+.

Effective use of ongoing legal reform processes on tenure or the initiation of such reforms based on the political will of governments and civil society to engage in REDD+ is the natural consequence of nesting REDD+ into more overarching programmes of national development.

REDD+ represents an opportunity to support the recognition and protection of indigenous peoples' and local communities' tenure rights. It could be a chance to provide them access to new support at the national and international level for strengthening tenure governance and their management capacities.

Empowerment of non-governmental stakeholders, in particular local stakeholders, needs more consideration to ensure that their rights are respected, that compliance with existing laws is exercised by all participants under REDD+, and that participation of non-governmental stakeholders is effective, transparent and fair. Systems of participation and processes designed for participation are still to be established based on FPIC principles.

Key issues for action

UN-REDD needs to develop a comprehensive and convincing tenure support programme at the national level. Such a programme could be initiated through communication activities that describe why tenure is important (to raise the awareness of decision makers), the development of diagnostic tools to identify where and when tenure is an issue that may need to be improved, and the establishment of an intervention framework linked to the diagnostics.

Key outcomes of Working Group Yellow

Vision statement on tenure in 10 years from now

REDD+ represents a future sustainable development tool. Tenure is recognized as a broad concept that is not just limited to ownership of land but also encompassing other rights. Along with savings in

carbon emissions, the reduced degradation of forests and related behavioural change (e.g. reduced wood fuel and charcoal consumption; improved tenure for communities, groups and forest owners and users; and increased capacity at all levels to implement REDD+ and related tenure processes) are an integral part of REDD+ engagement.

Challenges and opportunities for tenure work under REDD+

Stakeholder participation calls for more consultation with land owners, communities and indigenous peoples. Governments need to be more proactively engaged. This includes establishing conflict resolution systems at all levels.

Land administration and registration, and institutions managing forests at all levels need more capacity in terms of human and financial resources. This would also involve work on the legal framework of secure tenure and awareness raising among stakeholders to expand and improve communication and consultation so that it includes cross-sectoral issues related to land, agriculture, environment and forests.

Legal frameworks for tenure often do not recognize customary tenure arrangements and community rights. In the absence of sound land-use planning and demarcation of land, tensions between national legal frameworks and localized tenure arrangements can be created. Tenure rights and obligations may overlap, which increases the risks associated with REDD+ implementation.

The negative effects of corruption and large-scale land acquisition call for more transparency and accountability. REDD+ should fully consider whether it can be a catalyst for addressing wider tenure issues than just forest tenure.

Scenarios and levels of intervention (based on the options)

National and local project scenarios are deeply interconnected. Projects allow for flexible, localized implementation. They are a test bed for learning what to do (or not to do) and a way to most directly address tenure issues. They have the potential for good stakeholder participation.

National-level activities help strengthen capacity to provide for and enforce legal frameworks. They consider wider sets of adjacent stakeholders (beyond those with direct land ownership or other land related rights) and can scale REDD+ work beyond pilot projects.

The subnational and landscape options were seen as variants between the national and local options. It was noteworthy that when the group worked through country-level cases, participants began to see the options with new perspectives that were not immediately apparent when talking about the options in the abstract.

Traditional land access and user rights, and how to handle those within more formal legal frameworks, remain unclear. A formal boundary demarcation and enforcement of individual property rights is often inadequate to handle complex issues related to community uses and management practices.

REDD+ stakeholders in tenure work (rights, roles and responsibilities)

In analysing the major stakeholder groups between the national and project level, it became clear that the issues and groups were very similar. The issues became more varied when considered in a given context. The key insight was the critical importance of mapping stakeholders and developing useful and coherent stakeholder participation strategies and actions. For REDD+ to work, there has to be clarity about incentives; otherwise there will be no behaviour change.

The group identified in great detail the rights, roles and responsibilities of stakeholders. Participants focused on secure tenure rights, participation, law enforcement and compliance with the legal framework, as well as on incentives and financial flows (see Annex 3).

Key issues for action

Country perspectives were presented from Ethiopia, Papua New Guinea, Sri Lanka and the United Republic of Tanzania. In pairs, with their international colleagues, each representative explored their current situation with regard to REDD+ and tenure and envisioned some possible next steps.

The first priorities and key issues for action were the following: the need for capacity development; understanding the complexity of REDD+ as a catalyst and tool for sustainable land and forest management; the need for coordination between institutions engaged in REDD+; and stakeholder consultation and participation. The meaningful participation of stakeholders, in particular at the local level, requires effective conflict-resolution systems.

To making REDD+ and climate adaptation and mitigation an entry point into REDD+ implementation, cross-sectoral linkages need to be established so that REDD+ includes rural development, agriculture, water management and socio-economic community development.

The recognition of customary land tenure and governance is crucial for REDD+. It should be addressed at the highest levels to determine the role of informal community rights in the overarching legal tenure framework. National land-use plans and better land registration are major requirements. In this regard, safeguards are difficult to apply. Specific policies and legislation need to be established.

Determining the role of REDD+ in the context of national development, building awareness and achieving better communication should be done through the heightened leadership of government and stakeholders within their respective mandates. These activities include the management of the high expectations attached to the REDD+ instrument.

There are many experiences that need to be shared across levels and between countries. These discussions could include a debate on corruption in REDD+, large-scale land acquisition and ways of achieving increased transparency.