

Rights to forests and carbon Insights from Mexico, Brazil and Costa Rica

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Workshop on forest governance, decentralisation and REDD+
in Latin America and the Caribbean
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Research premise, gaps and case studies

- The role of tenure in REDD+ has been relatively explored
 - Insecure tenure - deforestation/degradation & appropriation of ES
 - Secure tenure - environmental stewardship & legitimacy of benefit-sharing
 - (See e.g. Sunderlin et al. 2009; Hatcher, 2009)
- However, very few studies have examined...
 - a) the importance of tenure security for countries' REDD+ strategies
 - b) how they address tenure conflicts and complex “bundles of rights” in forests
 - c) how they define and plan to enforce carbon rights and liabilities
- Three case studies: Mexico, Brazil and Costa Rica
 - Divergent land-use histories and tenure systems
 - Contrasting positions in REDD+ international negotiations
 - Multiple approaches to REDD+, and to carbon rights/liabilities

Land and forest tenure - some insights

- **Land and forest tenure systems**

Social relations, including property rights - authority (Sikor and Lund 2009)

Influence access, control over land and forest resources

Embed emerging claims over ecosystem services

- **Forest tenure systems encompass multiple “bundles of rights”**

Access/withdrawal/management/exclusion/alienation (Ostrom and Schlager 1996)

Forest tenure regimes are diverse - different actors hold different rights

Colonial history, landscape dynamics, uneven political/economic powers, land-use policies...

- **Characteristics of global/regional forest tenure**

States own between 76-65% of global forests (RRI, 2009; FAO, 2010a)

In LA only 43%, of which 57% is controlled by communities and private actors

Land reforms since the 1980s - conditional and not always effective in forest conservation terms (Pacheco and Barry 2009)

Forest tenure, REDD+, and carbon rights

- REDD+ is about receiving economic incentives for land-use change emission reductions achieved against a baseline

The difference in tons of carbon dioxide equivalent becomes tradable
Division in units of trade (REDD+credits) allows exchange

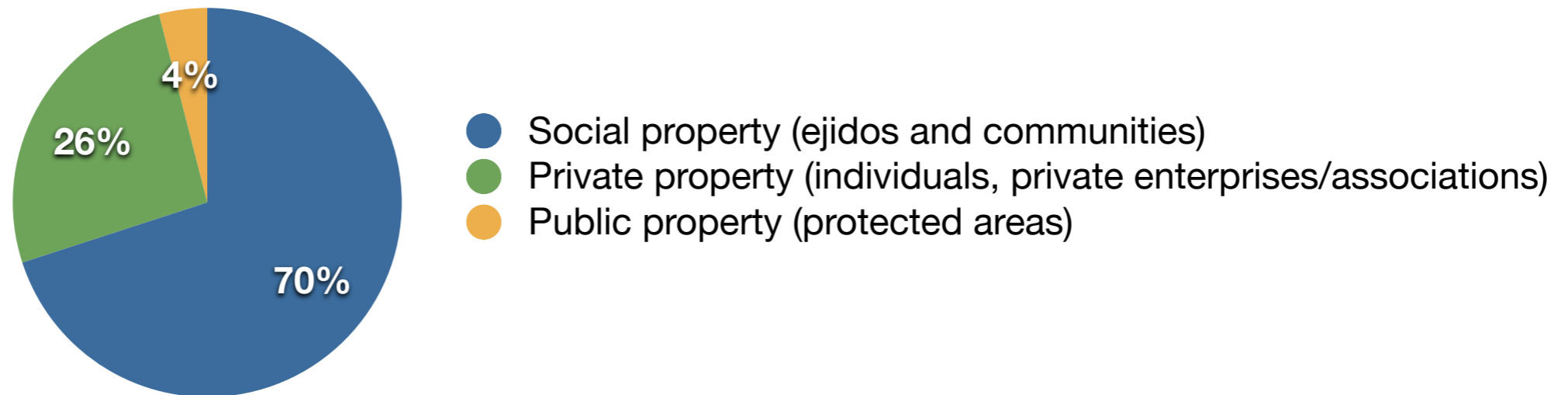
- Forest tenure regimes define who is...
 - 1) Responsible for forest management/conservation policies and measures
 - 2) Entitled to (potentially tradable) carbon rights
 - 3) Liable for future carbon losses
- Who is entitled to carbon rights in complex tenure regimes?

Will government retain rights over forest carbon?
Who is entitled to carbon rights in communal and indigenous territories?
Which legal and authority frameworks should
determine the allocation of carbon rights?
ensure accountability in trading and benefit-sharing terms?

Tenure, REDD+ strategies, carbon rights - Mexico

- Forest tenure: private (26%), public (4%), social property (70%)

Distribution of forest tenure in Mexico



- Emergence of REDD+ initiatives across governance scales

World Bank Forest Carbon Partnership Facility (FCPF) Initiative

SFM, expanding PAs, establishing pilots in PAs, and extending PES

New regional and local initiatives being designed, some based on experience with voluntary carbon markets

Tenure, REDD+ strategies, carbon rights - Mexico

- Carbon rights framework under development (?)....

SFM General Law 2003 - landowners are owners of their forest resources + should be compensated for providing ES

Carbon rights to be 'naturally' attributed to landowners

There is not yet a legal framework

- 1) defining how carbon rights should be allocated/traded under different circumstances (taking into account forest tenure + contract law)
- 2) regulating trade of carbon rights across initiatives and scales (a registry to ensure accountability)

Photo: Women in Rincón Chamula, Chiapas.
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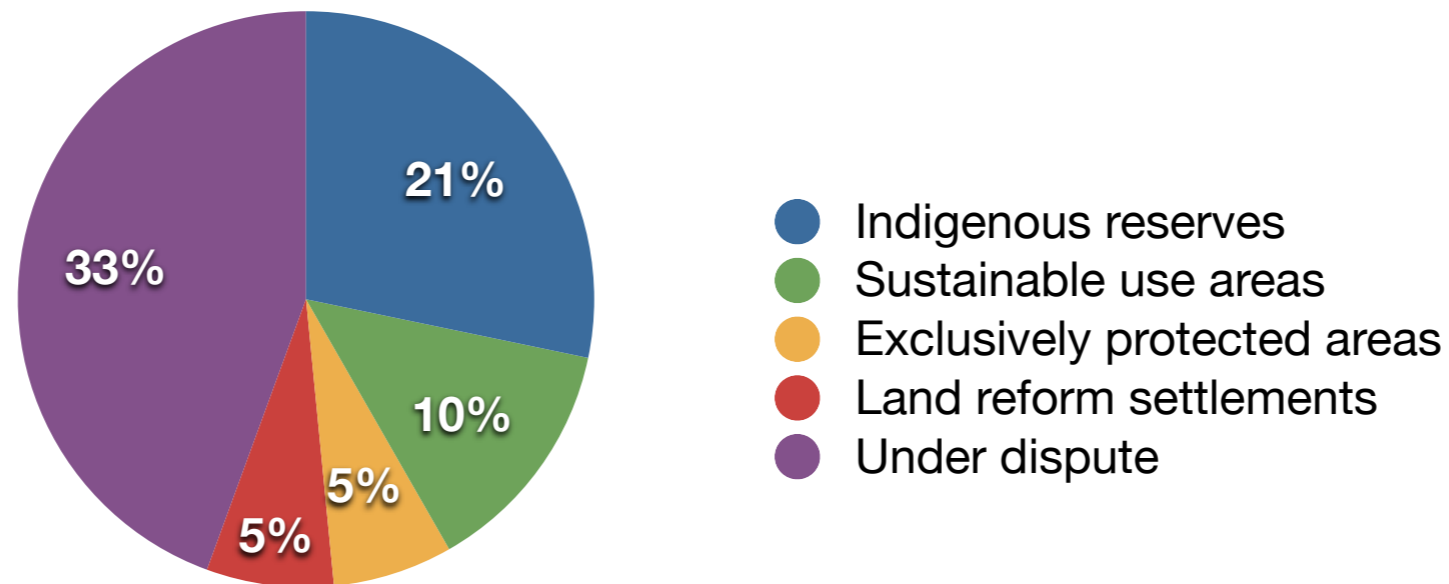


Photo: Men in Rincón Chamula, Chiapas.
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Tenure, REDD+ strategies, carbon rights - Brazil

- Amazon forest tenure: public (76%), private property (24%)

Distribution of public forest tenure in the Amazon biome



- Haphazard development of REDD+ early actions

Federal PES & legislation in process (Hall 2008; Wunder et al. 2008)

Amazon Fund - support to land titling processes, among others

Pilot REDD+ project promoted by the state of Mato Grosso

“Bolsa Floresta” Program - incentives to reduce degradation in Amazonas state

“Juma Sustainable Development Reserve” in the state of Amazonas

Tenure, REDD+ strategies, carbon rights - Brazil

- There is not (yet) a national carbon rights legal framework

Congress considering a specific law to regulate REDD+-related carbon rights (private owners and communities likely to be granted with carbon rights)

Mgt of Public Forests Law 2007 - concessionaires cannot trade forest carbon
Amazonas Law of CC, EnvCons and SD + Complementary Law no. 53, on the state system of Conservation Units 2007



Establish the Bolsa Floresta Program + the concept of ES products & services

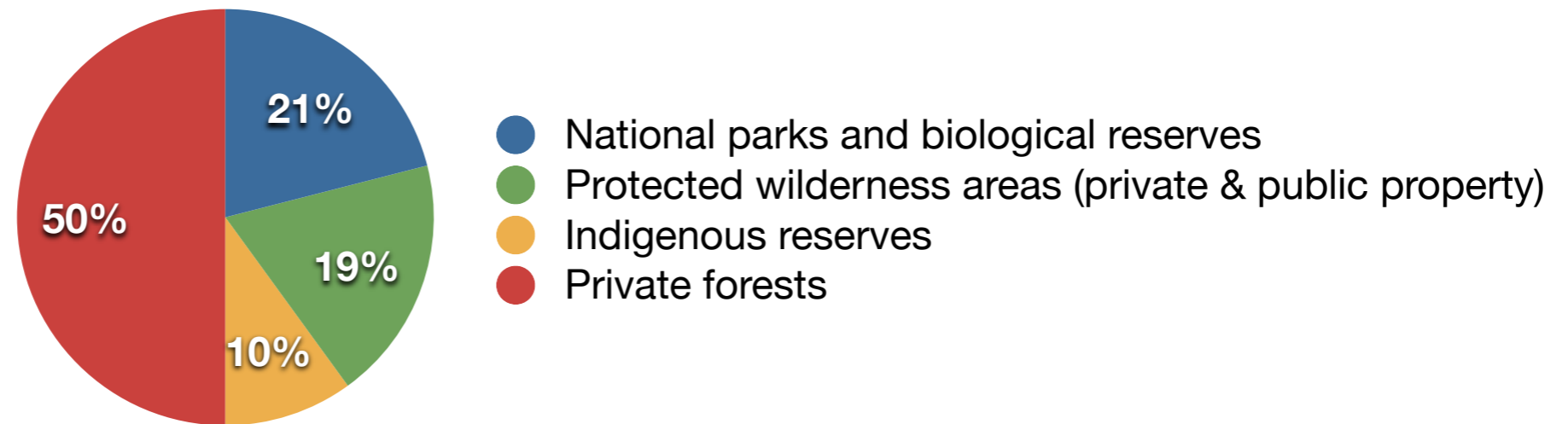
Set the Sustainable Amazonas Foundation (SAF)

Carbon rights derived from Bolsa Floresta activities and management activities in the Juma reserve and other State PAs granted to SAF

Tenure, REDD+ strategies, carbon rights - Costa Rica

- Forest tenure: public (45%), private property (55%)

Types and distribution of forest tenure regimes, Costa Rica



- National strategy developed under the WB-FCPF

Emphasis put on improving PAs management, SFM and extending PES

Support for titling processes, particularly in Protected Wilderness Areas

- Carbon rights legal framework (Resolution 546-90)

Landowners are entitled to carbon rights

Carbon rights tradable under private (sub-national projects) & public contract law

PES participants implicitly transfer carbon rights to the State

Take-home messages

- Forest tenure - historical, evolving, complex, critical for REDD+
- Tenure clarity - preliminary but not sufficient step in REDD+
 - Mixed evidence re: secure tenure and increased conservation
 - Some tenure regimes should widen actual rights to use & trade resources/ES
 - Access to a new property right may enhance rather than reduce conflict
- In reviewed countries....
 - State likely to retain carbon rights only from protected areas
 - Trend towards linking carbon rights with forest ownership (but not always)
- Lack of clarity on the contractual terms underpinning carbon rights trade and on associated liabilities
 - Who will be made liable for carbon losses in a community context?
 - How will we deal with contrasting systems of formal and customary law?
 - Which authorities will be legitimate to register carbon transactions and monitor/enforce penalties?

Take-home messages

Many open questions!
which need to be resolved...

Thank you