

## Tenure of indigenous peoples territories and REDD+ as a forestry management incentive: the case of Mesoamerican countries



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# Acronyms

ACICAFOC	Coordinating Association of Indigenous and Community Agroforestry (Guatemala)
ACOFOP	Association of Forest Communities of El Petén (Guatemala)
ADII	Association for Integral Indigenous Development (Costa Rica)
ANAM	National Environment Authority (Panama)
CDI	National Commission for the Development of Indigenous Peoples (Mexico)
CIDH/ IACHR	Comision Interamericana de Derechos Humanos y la Corte Interamericana de Derechos Humanos/ Inter-American Commission on Human Rights
CIFOR	Center for International Forestry Research
CNTC	National Federation of Rural Workers (Honduras)
CO <sub>2</sub>	Carbon dioxide
COHDEFOR	Honduran Forestry Development Corporation
CONAFOR	National Forestry Commission (Mexico)
CONAI	National Commission for Indigenous Affairs (Mexico)
CONAP	National Council for Protected Areas (Mexico)
CONTIERRA	Sub-Secretariat for the Resolution of Land Conflicts (Guatemala)
COONAPIP	National Coordination for the Indigenous Peoples of Panama
COPINH	Civic Council of Popular and Indigenous Organizations of Honduras
CPPFI	Catalogue of Inalienable Public Forestry Heritage
DINAFOR	National Forestry Directorate (Panama)
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
FETRIX	Federation of Xicaque Tribes of Yoro (Honduras)
FHONDIL	Honduran Lenca Indigenous Federation
FIP	Forest Investment Program
FONAFIFO	National Forestry Financing Fund (Costa Rica)
FONTIERRA	Land Fund (Guatemala)
FPIC	Free, prior and informed consent
GCF	Governors' Climate and Forests Task Force
GEF	Global Environmental Facility
GIZ	Deutsche Gesellschaft fuer Internationale Zusammenarbeit
IDB	Inter-American Development Bank
IDA	Institute of Agrarian Development (Costa Rica)
ILO	International Labour Organization
INA	Instituto Nacional Agrario (Honduras)
INAB	National Forestry Institute (Guatemala)
ITCO	Institute of Land and Colonization (Costa Rica)
IUCN	International Union for Conservation of Nature
IP	Property Institute (Guatemala)
LGEEPA	The General Law on Ecological Balance and Environmental Protection (Mexico)
LMDSA	Law on the Modernization and Development of the Agricultural Sector (Honduras)
MARENA	Ministry of Environment and Natural Resources (Nicaragua)
MASTA	Mosquitia Asla Takanka (Honduras)



MICCG	Guatemala's Indigenous Round Table on Climate Change
MIF	Multilateral Investment Fund
MOPAWI	Association for the Development of Honduran Mosquitia
MRV	Measuring, reporting and verification
NDP	National Programme Document (UN-REDD)
NGO	Non-governmental organization
OFRANEH	Community Agroforestry, Honduran Black Fraternity Organization
OAS	Organization of American States
PAPIN-DIPA	Support Programme for Indigenous Peoples
PAT	Land Administration Project in Guatemala
PATH	Land Administration Project in Honduras
PES	Payment for ecological services
PINFOR	Forestry Incentives Programme for Small Forest Landowners (Guatemala)
PINPEP	Forest Incentives Programme for Small Forest and Agroforestry Landholders (Guatemala)
PPD	Programa de Pequeñas Donaciones (GEF)
PROCEDE	Programme for the Certification of Ejidal Rights and Titling of Urban Plots (Mexico)
PROCYMAF	Project for the Conservation and Sustainable Management of Forest Resources (Mexico)
PRONAFOR	National Forestry Programme (Mexico)
PRONAT	National Land Administration Programme (Panama)
RAAN	North Atlantic Autonomous Region (Nicaragua)
RAAS	South Atlantic Autonomous Region (Nicaragua)
REDD	Reducing Emissions from Deforestation and Land Degradation
REDD+	Reducing Emissions from Deforestation and Land Degradation plus mechanisms for the sustainable management and use of forest areas
R-PIN	REDD+ Readiness Plan Idea Notes
R-PP	REDD+ Readiness Preparation Proposals
SEMARNAT	Mexican Secretariat of Environment and Natural Resources (Mexico)
SINAP	National System of Protected Areas (Guatemala)
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
UNPFII	United Nations Permanent Forum on Indigenous Issues
UZACHI	Zapoteco-Chinanteca Community Union (Mexico)
WCMC	World Conservation Monitoring Centre
WCPA	World Commission on Protected Areas
WDPA	World Database on Protected Areas





# Introduction

Programmes to reduce emissions from deforestation and ecosystem degradation, such as REDD+ and other forestry incentive programmes, including Payment for Environmental Services (PES), could represent an opportunity to strengthen processes of conservation, sustainable usage and poverty reduction in the Mesoamerican region, particularly in indigenous territories and communities. Analysing the context of such initiatives and how they are interlinked is relevant to understanding how these multipurpose programmes can achieve their objectives in the light of recent developments in the recognition of indigenous peoples' rights over land tenure and natural resources in the region. Examining these contexts and their linkages in countries such as Costa Rica, Guatemala, Honduras, Mexico, Nicaragua and Panama, where there are considerable forest areas with significant indigenous populations, is the aim of this study.

From the south of Mexico to Panama, there is a mosaic of indigenous groups. They make up over 10 percent of the population in countries such as Belize, Guatemala, Mexico and Panama. As in the rest of Latin America, forest areas or ecosystems rich in biodiversity in Mesoamerica tends to coincide with the presence of indigenous peoples who, in general, carry out sustainable and integrated management of natural resources. Over the past 20 years, the land and territories occupied by these groups have been the subject of processes to recognize ancestral rights, recent colonizations, agrarian reforms and land tenure regularization programmes financed by governments and international cooperation. The forms of land tenure associated with these ethnic groups vary from country to country and also among the groups themselves. They have been shaped not only by ancestral forms of occupation but also by national public policies. Although the tenure of some indigenous groups in forested lands is individualized, most indigenous groups living in forests in Mesoamerica can be described as having communal and collective systems for the ownership and use of the natural resources belonging to them. These forms of tenure involve the exercise of local territorial governance practices that in some cases are highly relevant and effective for the sustainable management of natural resources.

Over the past 20 years, advances in recognizing the rights of tenure of indigenous peoples over forest territories have not been uniform across the Mesoamerican region. In Atlantic regions, the recognition of rights and the delimitation of territories have been carried out since the beginning of the century in Nicaragua and Honduras. In the previous century, there was a recognition of collective and communal rights in the forest lands of southern Mexico, the lands of indigenous reserves in Costa Rica and in the indigenous areas (*comarcas*) of Panama. Most Central American countries now have delimitation projects, including land administration, land registry and property register services, including actions in indigenous lands, that are carried out by national governments in conjunction with international agencies. Despite such progress, some countries face difficulties, such as problems in including the recognition of indigenous peoples' tenure rights in legislative frameworks, or closing the loopholes therein; problems in developing effective inter-institutional coordination mechanisms to operate related programmes; or the lack of an institutional framework that is specifically adapted to dealing with the issue of tenure in indigenous territories.

Incentive mechanisms for good forestry management are one of the contributions the Mesoamerican experience has made toward natural resource management. Since the 1980s, some Mesoamerican countries have been developing various community forestry experiments, PES schemes and other forestry incentive mechanisms. To date, the experience has been successful in some cases, such as PES in Costa Rica and community forestry in Mexico and Guatemala. Lessons learned from such experiences include the recognition that economic incentives for forestry activities and the services they generate promote the commitment of communities to regulation and the sustainable use of their forests. Furthermore, the use and conservation of communal forestry resources in the experiments analysed have significantly reduced poverty. Forestry income has a positive effect on the living conditions of families, and in some cases has facilitated the development of community services. In terms of the impact of organizational structures and local governance on the development of such forestry management experiences, experience shows that ethnic belonging may be conducive to creating the right conditions for developing and agreeing on rules for managing resources. This is not limited to the forestry sector, as peasant communities have also adopted their own effective forms





of self-regulation. Communities that have no ethnic ties but have experienced years of struggle and communal living, such those involved in as community forestry in Mexico presented in Chapter 4, have managed to maintain a shared vision and a basis for trust that has ensured the success of their undertakings in good forestry management. Lastly, these experiences have made it easier to link government programmes from various sectors to indigenous territories, and have laid the foundations of trust among the various stakeholders, particularly with the government sector. The lessons learned from Mesoamerican experiences in community forestry, PES and other forestry incentive mechanisms is a hugely valuable and useful asset for the implementation of the REDD+ initiative, both in Mesoamerica and the rest of Latin America. It should, however, be pointed out that the consolidation of such experiences will be largely dependent on the sustainability of funding mechanisms through PES schemes that must demonstrate their value, or through the marketing of products obtained from sustainable forestry management.

In this regional context, what are the potential opportunities and limitations regarding the development of REDD+ processes in indigenous territories of Mesoamerican countries? REDD+ includes several aspects that must be guaranteed as part of its implementation, including: minimum scale of forest territory to receive compensation; permanence of effects to mitigate climate change (which requires, *inter alia*, territorial land owners to have secure and legally recognized tenure rights); the implementation of social and environmental safeguards that require basic legal frameworks and processes for participation and consultation; implementation of monitoring, verification and reporting mechanisms; and the additionality of guaranteeing that compensation will generate additional impact compared with the incentive-free situation.

In relation to these requirements and the general operation of REDD+ in indigenous territories, the region's researchers and indigenous peoples' organizations have used various forums and publications to discuss concerns and risks associated with the possible operation of programmes such as REDD+ or PES. Specifically in terms of the preparation and implementation of REDD+ programmes, these groups have pointed out the lack of appropriate consultative bodies; the possible weakening of ancestral management and governance practices as a result of applying incentives for good forestry management; the halting of processes to recognize territorial rights; and the lack of clear regulations on payment of compensation, particularly at the local level.

With a view to addressing the risks identified by indigenous organizations in terms of the possible effects of REDD+ on their territories, the UN-REDD Programme and other international organizations are jointly proposing amendments to the approach to be used in Latin America. With this in mind, aspects of sustainable management, rather than simply conservation, have been included. In addition, to include free, prior and informed consent (FPIC) mechanisms in REDD+ processes, operational handbooks are being produced for the participation of indigenous peoples that include the FPIC principle, such as the *Joint Guidelines on Stakeholder Engagement of the FCPF and UN-REDD Programme*.<sup>1</sup> Capacity-building programmes are also being developed for forest-dependent indigenous peoples. In addition, the aim of the REDD+ 'nested approach' is to facilitate the inclusion of subnational initiatives that enable countries to launch programmes with a local and less centralized focus, which can subsequently become a national approach; or the simultaneous recording and receipt of credit at the subnational and national levels. Lastly, it is worth mentioning the efforts of the various international agencies to achieve a common approach for ensuring social and environmental safeguards, without neglecting the need to adapt processes to national legal and institutional frameworks. All these initiatives form a solid base for strengthening trust among the various actors involved in preparing and implementing REDD+.

In the first chapter, this document formulates the conceptual framework for understanding the development of processes to recognize rights of tenure over land and natural resources of indigenous populations in Mesoamerica; the concepts and requirements of the REDD+ initiative in its national planning processes; and the concepts underlying the payment for environmental services experiments and other forestry incentives being developed in the region. Chapter two analyses the situations of existing forest mass, land tenure in indigenous and peasant communities, and the forms of community forest management and governance that may be relevant to REDD+ in six Mesoamerican nations: Costa Rica, Guatemala, Honduras, Mexico, Nicaragua and Panama. Chapter three examines the development of national and international legal frameworks, and the way in which existing governance systems can facilitate the implementation of REDD+ proposals in indigenous and peasant forest territories in Mesoamerica. Chapter four describes

<sup>1</sup> [http://www.unredd.net/index.php?option=com\\_docman&task=cat\\_view&gid=1467&Itemid=53](http://www.unredd.net/index.php?option=com_docman&task=cat_view&gid=1467&Itemid=53)



the most significant Mesoamerican initiatives that have tested economic instruments and systems of organization that contribute to the conservation and good management of forests, through community enterprises or PES systems, and have been promoted by indigenous and peasant communities with funding from international cooperation and national governments. Chapter five analyses the opportunities and limitations of REDD+ processes in indigenous forest territories in Mesoamerica, examining the risks and benefits of such processes for the work that national governments are carrying out with the support of UN-REDD to reduce the impacts of greenhouse gas emissions.





## CHAPTER 1

# Concepts: REDD+, territorial rights of indigenous peoples and incentives for good forestry management

## 1.1 Concepts relating to the territorial rights of indigenous peoples

In Latin America, and Mesoamerica in particular, the main inhabitants of the forest areas are indigenous populations. These groups also have the highest levels of poverty. The region's indigenous peoples and organizations, as well as international bodies have fought a long battle for the recognition of tenure rights over land and natural resources. The international attention received by the recognition of such rights in the past 15 years is due to the democratization of some political processes in Central America; the development of the International Decade of the World's Indigenous People (1995-2004); the ratification by some countries of Convention 169 of the International Labour Organization; the adoption by the member countries of United Nations Assembly in 2007 of the United Nations Declaration on the Rights of Indigenous Peoples; and the importance attached to the conservation of forest resources. This increased attention is due in particular to the important role played by indigenous movements in many of the region's countries in defending their rights over the territories traditionally occupied by them (sometimes for centuries). Chapter two analyses in detail the current situation in Mesoamerican countries in terms of the land tenure rights and the characteristics of the tenure systems, which are largely determined by historical, cultural and social factors.

Since the 1980s, in Latin America, the processes to devolve, return or strengthen the ownership rights of indigenous territories in public forests have received particular attention. This has been especially pronounced in the Brazilian Amazon and the lowlands of Bolivia (Pacheco, *et al.*, 2011), and more recently in the territories of the Miskito and other ethnic groups in the North Atlantic Region of Central America (see table 1). These reforms have been introduced through various arrangements to strengthen rights over land and natural resources, with priority given to the collective form of tenure over individual ownership. These processes have also strengthened the decentralization of forestry management, by encouraging the participation of communities and other local actors in decision making. In the Mesoamerican region, previous efforts had been made in Costa Rica, Honduras, Guatemala and Mexico (a pioneer in such matters), in the form of community titling or through peasant cooperatives.

**Table 1. Forest tenure by region**

	Global (%)	Latin America (%)	Asia (%)	Africa (%)
Governments (public land)	74.7	36.1	67.8	97.9
Owned by communities and indigenous peoples	9.1	24.6	23.6	0.1
Allocated for use by communities and indigenous peoples	2.4	7.3	2.9	1.6
Private and business property	13.8	31.9	5.7	0.4

Source: Rights and Resources Initiative (RRI) 2010,2 citing Sunderlin et al. 2008 and ITTO/RRI, 2009.

Along with national legislation defining the land rights of national indigenous populations, at the international level Convention 169 of the International Labour Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries was approved in 1989. Convention 169 is an important landmark in the strengthening of territorial rights of indigenous populations. In Part 2 of Convention 169, there is a detailed reference to land, including the concept of territory that implies the habitat in its entirety as occupied or used by the peoples. The Convention clearly states the right of ownership and possession of these lands (Art. 14) by indigenous and tribal peoples, as well as the right to use, manage

<sup>2</sup> *The End of the Hinterland: Forests, Conflict and Climate Change*. RRI 2010. Data include 36 of the countries with the highest number of forests (representing 85 percent of the world's forests).



and conserve existing natural resources on such land (Art. 15). The Convention is a binding international instrument that is subject to ratification by governments. With the exception of Belize, El Salvador and Panama, all Central American countries and Mexico have ratified the Convention. As well as Convention 169, Articles 25 and 26 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, establish the right of indigenous peoples to maintain the territories and natural resources they have traditionally used, and calls on States to give legal recognition to those rights.

At the international level, there is a growing concern around the security of land tenure and access. This led to the adoption in May 2012 by member countries and organizations of the Committee on World Food Security of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. On the subject of climate change, the Guidelines recognize the following:

“States should ensure that the legitimate tenure rights to land, fisheries and forests of all individuals, communities or peoples likely to be affected, with an emphasis on farmers, small-scale food producers, and vulnerable and marginalized people, are respected and protected by laws, policies, strategies and actions with the aim to prevent and respond to the effects of climate change consistent with their respective obligations, as applicable, in terms of relevant climate change framework agreements” (FAO, 2012).

The development of legal frameworks relating to environmental services and forestry legislation has also facilitated the recognition of new rights – rights that not only relate to collective land tenure but also to the use of natural resources and the exclusion of third-party access as a way of protecting against colonization and certain types of concessions awarded by States (e.g. forestry, mining, prospecting concessions). As presented in Chapter three, however, the arrangements for such recognition of collective tenure over land, natural resources and environmental services have been implemented differently in Latin America and the Mesoamerican region.

There are various interpretations of the forms of legal recognition for territorial rights and forms of government in forest lands. FAO (FAO, 2008) groups indigenous territories into three forms of titling:

- Titling that permanently recognizes the collective dominion of land with the ability to apply forms of local government (Mexico, Nicaragua, Panama)
- Titling that recognizes for an indefinite term the right to use the land and renewable natural resources and maintain their internal systems of government (Costa Rica)
- Community or inter-community titling in the framework of agrarian legislation or other civil code legislation. This titling is carried out by creating civil associations or cooperatives, as there is no legal recognition of the community or territory itself (Guatemala and Honduras)

To ascertain the level of legal certainty over natural resources, other authors consider territorial rights as a series of rights that are increasingly accumulated, from access to the possibility of alienation (FAO, 2003; Schlager and Orstom 1992). This includes five types of rights, which can overlap and do not necessarily belong to the same person or group:

- Access: right to enter the area
- Use: right to use the resources or waive that right
- Management: right to regulate patterns of use or transformation of resources
- Exclusion: right to decide who may or may not access the natural resources
- Alienation: right to sell, rent or award concessions for the use of natural resources



Lastly, as stated in Chapter two, the various arrangements for recognizing the collective tenure of forest land vary in terms of their geographical scope. In the Mesoamerican region, the first titling efforts were at the community level. This involves forest territory being recognized as that of a main population centre, the community, which sometimes includes neighbouring areas.<sup>3</sup> Community titling was adopted in Mexico through the 1917 Constitution and was based on the titles that the Spanish Crown awarded to indigenous communities in colonial times. The same model has been used for the titling of some indigenous communities in central Honduras and in forest lands in Guatemala. Another form of titling is one that considers a territory to belong to various communities. This was adopted for the titling of indigenous territories in Costa Rica, Panama and more recently in the Atlantic region of Honduras and Nicaragua. This form of titling results in several population centres sharing a single title. The model is based on traditional forms of land use in which a series of population centres carry out hunting, fishing or gathering activities in the same area. Territorial, inter-community or *comarca* titling generally involves the establishment of a second-level body to which the State formally awards ownership or user rights. This can be based on the legal recognition of the territory as a specific legal entity (Territory of the autonomous regions of Nicaragua, or *Comarca* in Panama) or the creation of a legal entity such as a civil association or cooperative (Atlantic regions in Honduras and Costa Rica).

As will be demonstrated in the following chapters, these various arrangements for the recognition of indigenous territorial rights have different implications for local governance systems and also for access and administration of forestry incentives, including PES and initiatives such as REDD+.

## 1.2 The REDD+ initiative

It is estimated that carbon dioxide (CO<sub>2</sub>) caused by inappropriate forestry management is responsible for around 17 percent of global greenhouse gas emissions. To reduce such emissions, in 2008, FAO in conjunction with the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP), set up the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD) a support programme for countries to help develop capacities to reduce emissions from deforestation and land degradation (REDD) and subsequently implement a REDD+ mechanism.

The initiative was initially conceived as a system for rewarding forest conservation and carbon capture efforts, but now includes mechanisms for the sustainable management and use of forest areas. This supplementary focus resulted in the addition of the plus sign to the name of the REDD initiative, which is now known as REDD+. Current discussions around REDD+ include aspects relating to the type of incentives: should they be market mechanisms that directly link incentives with the quantity of CO<sub>2</sub> emissions avoided (carbon credits), or more flexible mechanisms that consider not only the carbon value but also other aspects, including opportunity costs of land conservation, and the costs of proper management?

In Latin America, and the Mesoamerican region in particular, the main multilateral cooperation actors that support the initiative are UN-REDD, which is jointly managed by UNDP, UNEP and FAO, the World Bank, the Inter-American Development Bank (IDB), the Forest Carbon Partnership Facility (FCPF) and the Forest Investment Program (FIP). Other bilateral cooperation actors are also involved, such as the Governments of Norway, Germany and the United States. Another relevant initiative is the Governors' Climate and Forests Task Force (GCF), which brings together federal and provincial bodies from Brazil, Indonesia, Mexico, Nigeria, Peru and the United States.

For these bodies, Mexico and the Mesoamerican region represent an opportunity to develop the REDD+ initiative in an area with significant forest coverage and biodiversity, and where a substantial proportion of the total population of countries such as Belize, Guatemala, Mexico and Panama are indigenous populations living in forest territories that have been historically marginalized from economic development. In addition, the current situation in terms of processes to strengthen territorial rights in Mesoamerica and existing forestry and agrarian legislation offer opportunities to develop forest conservation and carbon capture mechanisms that might not only benefit CO<sub>2</sub> reduction aims, but also the efforts of national governments to reduce marginalization and poverty among indigenous populations in forest

<sup>3</sup> Indigenous communities often lead to the formation of other neighbouring population centres based on the separation of family groups or clans seeking available land for crop production.



areas. This means that REDD+ activities in Mexico and the Mesoamerican region could meet objectives in terms of climate change reduction and contribute to the fight against poverty and food insecurity.

As part of the REDD+ initiative, the first transfers of resources are under way, mainly through the voluntary market, in the form of funding from UN-REDD, FCPF and FIP. Most resources are currently being used for the initial phases (see annex 1. Central American countries and their REDD+ preparation phase).

Several aspects must be guaranteed at the subnational and national levels if REDD+ is to be implemented:

a) *Measuring, Reporting and Verification (MRV)* mechanisms for emissions are essential, as the aim is to develop a transparent and reliable international system to guarantee tangible impacts for those who invest in carbon purchase. This has been initially conceived as a national system, and civil society actors (including indigenous organizations) have proposed combining this with local and participatory MRV mechanisms to involve forest territories through their local organizations.

b) *Additionality*, namely the guarantee that compensation will generate an additional impact compared with the incentive-free situation. Demonstrating the aggregate effects of support provided will require countries to have a solid base line to indicate the current dynamics of emissions linked to deforestation and ecosystem degradation (in addition to MRV). This concept does, however, concern some forest owners, including indigenous territories, as they feel they could be at a disadvantage compared with those with more deforested land that is now being reforested.

c) *Avoiding leakage*, which could happen where an REDD+ incentive designed to conserve forest lands transfers the risk of changed land use to another area nearby or further afield.

d) *Guaranteed permanence of effects*, which means that beneficiaries of conservation incentives will be able to ensure that emissions reduction will be a lasting process because: a) carbon cannot be stored indefinitely by vegetation or soil, and that afforestation/reforestation arrangements were therefore introduced (Seeberg Elverfeldt, C, 2010); and b) there may be a lack of definition around land tenure and rights over natural resources that threaten the legal right of current land owners to remain (as is the case for many territories in the Mesoamerican region).

e) The *scale* for receiving REDD+ compensation, whereby the minimum area considered would be 30 000 to 40 000 hectares, and 10 000 hectares for afforestation/reforestation projects (FAO 2010, Carbon Finance). The carbon capture from smaller areas would not offset the administrative costs of implementing MRV/REDD+.

f) Implementation of *social and environmental safeguards*, for which the application mechanisms and concepts have been the subject of major international debates, is based on the fact that national legal frameworks (for natural resources, forests, land tenure, social participation, indigenous policy and so on) may not be sufficient to guarantee efficient and coordinated implementation of REDD+. The discussion among other international agencies that promote REDD+ is concentrated on the participation of indigenous peoples,<sup>4</sup> as some seek FPIC, while others see participation as being limited to consultation.

REDD+ involves rolling out three phases at the national level: 1) formulating plans and strategies, defining institutional needs and technical capacity-building; 2) strengthening MRV systems to ensure transparency and impact measurement in terms of emissions reduction; and 3) at the subnational and national levels, developing mechanisms for compensation and monitoring of emissions avoided.

Most Mesoamerican countries – and Costa Rica, Guatemala, Mexico, Nicaragua and Panama in particular – are in phase 1 and have therefore prepared their REDD+ Readiness Plan Idea Notes (R-PINs) and their REDD+ Readiness Preparation Proposals (R-PPs), in accordance with the FCPF guides or National Programme Document (NPD) based on the UN-REDD guidelines<sup>5</sup> (see annex 1. Central American countries and their REDD+ preparation phase).

<sup>4</sup> For more information, see the Common Approach between FCPF/World Bank and UN-REDD+.

<sup>5</sup> R-PINs and R-PPs are available at <http://www.forestcarbonpartnership.org/fcp/node/203> and NDPs on the UN-REDD website: <http://www.un-redd.org/>.



As part of negotiations on the activities associated with REDD+, there was a consensus that these activities will be measured and compensated on the basis of national accounting systems. While governments are beginning to develop their capacity for implementing and managing national systems, subnational initiatives are rapidly being developed at the level of states (in Mexico), departments or municipalities. In this sense, they have considered various ways of allocating possible REDD+ funds via bilateral or international mechanisms:

- Direct distribution of the incentives of the international REDD+ mechanism to departments/provinces and indirect distribution of the benefits of the initiative from governments to private actors;
- Direct distribution of REDD+ incentives through the international REDD+ mechanism to subnational actors and governments;
- Direct distribution of the incentives of the international REDD+ mechanism to the national government alone, with indirect distribution by state/provincial government to private actors.

Integrating and combining the various levels will be crucial for the entire REDD+ implementation process. To ensure appropriate accounting of emissions and enable the transfer of incentives in the form of carbon credits or PES, there is a need to define rules that include different levels of accounting, management and incentives. These rules are referred to as 'nested systems' that connect projects or programmes within the national or departmental REDD+ accounting systems. Nesting allows incentives to be allocated at the appropriate levels of governance.

### 1.3 Payment for environmental services

PES are a form of economic incentive offered to those who manage ecosystems with a view to sustainably maintaining and improving the flow of environmental services provided by those ecosystems. These economic incentives are paid by those that benefit from environmental services, be they local, regional or global beneficiaries (FAO, 2011a). PES is an extremely common way of managing ecosystems. It is used by Water User Boards, national and international institutions working with the effects of climate change, as well as a means of conserving natural resources and landscapes. Given the interest of REDD+ in reducing the impact of greenhouse gas emissions, it encourages the development of mechanisms for reducing emissions, and these include PES and other incentives for good forestry management.

Since the late 1990s, Mesoamerican countries have developed significant experience in implementing PES programmes. These programmes are rolled out at various levels. In some cases, governments raise funds to pay for these services through nationwide mechanisms, as in Costa Rica with its tax on fossil fuel users, or Mexico, which uses some of the income from the public administration of dams. In other cases, governments have facilitated the development of local PES schemes, whereby the users (households, irrigation system users and tourist enterprises) of environmental goods, including water, forests and the landscape, directly pay the owners of natural resources to ensure the sustained provision of those goods. Similarly to REDD+, the PES experiments in Mesoamerica have been designed as multipurpose programmes to ensure the maintenance and improvement of environmental services, while also benefitting the poorest population (Pagiola S. *et al.*, 2005).

Owing to the limited experience in developing concrete compensation mechanisms promoted by REDD+, PES programmes developed in the forests of Mesoamerican countries are an important option for developing REDD+ in the region. The pillars that have supported the success of such PES programmes in guaranteeing the sustainable provision of environmental services are based on the existence of secure land tenure in the territories of implementation; the integration of traditional forms of natural resource management of the communities that live there; robust forms of territorial management and governance; and the coverage of food security and employment among the territories' inhabitants.

The possibility of using existing PES schemes in the region's communities or territories to develop REDD+ would involve respecting their key requirements, such as scale, permanence of effects in the long term, and social and environmental safeguards. In addition, the territories where the REDD+ initiative is developed would need to have the capacity to





respond to MRV mechanisms and avoid any leakage effect, such as the change of land use in forests not included in the compensation schemes.

Having said that, it is vital to mention that the development of PES and REDD+ in Latin America has been controversial, particularly for ethnic groups and non-governmental organizations (NGOs) that have identified various risks in planning and implementing this mechanism. Such groups point to the lack of appropriate consultative bodies; the possible weakening of ancestral management and governance practices as a result of PES implementation; and the hampering of processes to recognize territorial rights (as governments may be tempted to retain ownership of potential benefits of REDD+). Chapters 4 and 5 include a more detailed analysis of these objections.



## CHAPTER 2

# Forest land and indigenous populations in Mesoamerica: cases of Costa Rica, Guatemala, Honduras, Mexico, Nicaragua and Panama

### 2.1 Forest resources in the Mesoamerican region

In 2010, the forest area of Latin America and the Caribbean<sup>6</sup> represented 23.5 percent of the global forest area (FAO, 2011b). Out of the Latin American total, the Mesoamerican region (Central America and Mexico) accounts for 8.8 percent of the forest area, with 6.8 percent of that belonging to Mexico and 2 percent to Central America.

Table 2. Forest area in Mesoamerican countries

Country	Forest area (1,000 hectares)	Percentage of national area (%)	Percentage of the forest area in Mesoamerica (%)
Belize	1,393	61	1.7
Costa Rica	2,605	51	3.1
El Salvador	287	14	0.3
Guatemala	3,657	34	4.3
Honduras	5,192	46.4	6.2
Nicaragua	3,114 Natural Other forest areas: 3392	26 percent natural forests and over 50 percent also including agroforestry systems	3.7
Panama	3,251	44	3.9
Mexico	6,4802	33.4	76.9
Total	8,4301		100 percent

Source: Produced on the basis of data from the FAO database, State of the World's Forests, 2011.

Mesoamerican forests tend to have rainforest vegetation, temperate forests and cloud forests, with the exception of a few dry forest areas in Mexico and very small areas in Central American countries. In terms of total area by country, the percentage of forest area in each of the countries in the Mesoamerican region (except El Salvador) represents over 30 percent of the national territory. This is highly relevant for the potential impact of the REDD+ initiative.

Deforestation and degradation processes in the Mesoamerican region are mainly due to land use changes for crop or livestock activities, illegal timber felling, forest fires and, in some countries such as Honduras, Mexico and Nicaragua, the impact of hurricanes. It is estimated that 70 percent of deforestation is caused by the transformation of forests into grassland, and 30 percent by agricultural expansion. If current trends continue until 2050, the region is predicted to lose around 45 gigatonnes of carbon.<sup>7</sup>

<sup>6</sup> Unlike the calculation from the FAO publication: State of the World's Forests (2011), for this document the total forest area of Latin America and the Caribbean was calculated to include Mexico.

<sup>7</sup> Central American Commission on Environment and Development, 2009 and CLUE Model in PRISMA, 2010.



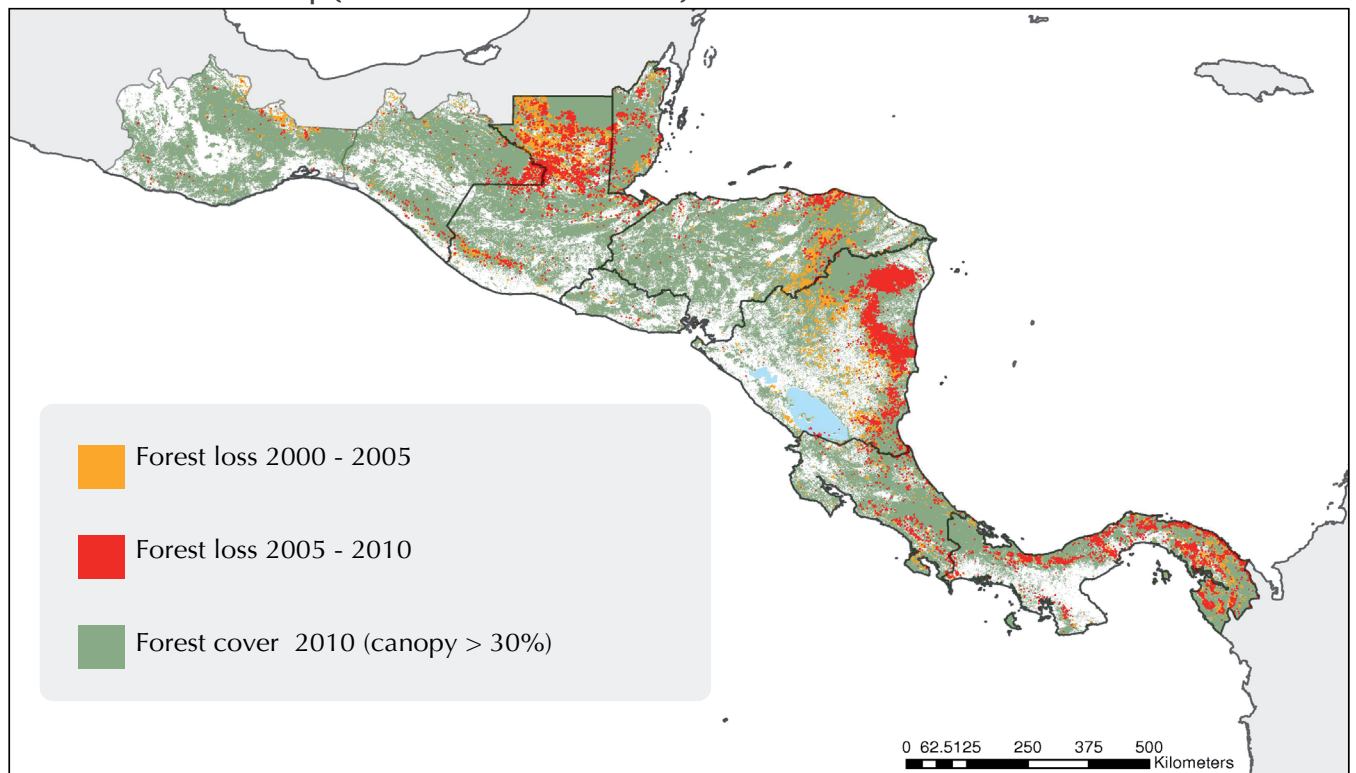
**Table 3. Annual change rate of forest area in Mesoamerica (1990–2000; 2000–2010)**

Country	Annual change rate, 1990–2000 (%)	Annual change rate, 2000–2010 (%)
Belize	-0.6	-0.7
Costa Rica	-0.8	0.9
El Salvador	-1.3	-1.4
Guatemala	-1.2	-1.4
Honduras	-2.4	-2.1
Nicaragua	-1.7	-2
Panama	-1.2	-0.4
Mexico	-0.5	-0.3
Total Central America (not including Mexico)	-1.6	-1.2

Source: Produced based on FAO database, State of the World's Forests, 2011.

These deforestation processes have increased the rate of annual change in four of the eight countries in the Mesoamerican region. Having said that, in Belize, Costa Rica, Mexico and Panama, there is a major transition and reforestation process that has brought down annual rates of change in the national forest area to almost zero in Mexico and Panama. This is significant in Mexico considering that the country's total forest area in 2010 was 64 802 000 hectares. In Costa Rica, not only has deforestation stopped but there is also a major reforestation process under way that has reached 0.9 percent a year. In total, over the past 10 years the deforestation rate in Central America has fallen by -0.4 percent, which represents an annual reduction in the destruction of 126 000 hectares of forest.<sup>8</sup>

**MAP 1. Deforestation map (2000–2005 and 2005–2010)**



\*Forest change has been magnified to facilitate consultation of the map. Real change may be smaller than suggested by the map graphics.

**Sources:**

- Change from MODIS Vegetative Cover Conversion
- Carroll, M.L., C.M. DiMiceli, J.R.G. Townshend, R.A. Sohlberg, M.C. Hansen, R.S. DeFries (2006), Vegetative Cover Conversion MOD44A, Burned Vegetation, Collection 4, University of Maryland, College Park, Maryland, 2004.
- Associated Peer-Reviewed Publication: Zhan, X., R. Sohlberg, J.R.G. Townshend, C.M. DiMiceli, M.L. Carroll, J.C. Eastman, M.C. Hansen, R.S. Defries (2002), Deteccion de cambios en la cobertura de suelo usando MODIS 250 meter data, Remote Sensing of Environment, 83, 336-350.

**Database source:**

- Global Land Cover Facility, [www.landcover.org](http://www.landcover.org).

<sup>8</sup> Central America suffered annual deforestation of around 374 000 hectares of its total forest area in the period 1990-2000, which dropped to an annual total of 248 000 hectares for the period 2000-2010.



Despite the positive reports of an overall reduction in deforestation processes in the Mesoamerican region, there are major deforestation fronts in areas with a large forest mass, such as the Maya Biosphere in Guatemala, the Río Plátano Reserve in Honduras, the Nicaraguan Caribbean region and the Ngöbe Buglé District in Panama (FAO, 2011b) – as shown in Map 1. These regions are also indigenous territories where population migration from Pacific to Atlantic areas, the advance of the agricultural frontier and illegal timber felling by people outside the communities are creating major conflicts with indigenous populations and their ancestral rights over the territories concerned. It should be pointed out that such conflicts take on greater importance when they take place in forest territories close to national borders, which is the case for most Mesoamerican countries.

## 2.2 The indigenous populations of Mesoamerican forest regions - Costa Rica, Guatemala, Honduras, Mexico, Nicaragua and Panama

As in Latin America as a whole, the Mesoamerican region's forest areas, indigenous territories and areas with high levels of rural poverty are often one and the same. Latin America is a region of many cultures, with its 671 recognized ethnic groups. There are estimated to be around 28-43 million indigenous people in the region, which represents around 40 percent of the total population of Latin American countries (FAO, 2009a). Around half of the indigenous population live in tropical forest areas. The highest concentration of indigenous peoples is found in Andean and Mesoamerican countries, such as the Plurinational State of Bolivia, Ecuador, Guatemala and Mexico. Around 80 percent of Latin America's indigenous population is poor. Analysing poverty levels from an income point of view shows that, notwithstanding the reduction in the levels of marginalization in countries over the past two decades, indigenous people continue to have the highest percentage of poverty in relation to the non-indigenous population (World Bank, 2006; Bello, *et al.*, 2002; World Bank, 2007).

In Mesoamerican countries, the situation of indigenous peoples is no different from that throughout the region. In Mesoamerica, indigenous peoples are among the poorest population groups and represent a substantial proportion of total population in countries such as Belize, Guatemala, Mexico and Panama (as shown in Table 4).

**Table 4. Percentage of indigenous population within national population of Mesoamerican countries**

Country	Total indigenous population	Percentage of indigenous population within national total (%)	Data source: Population census/year
Belize	38,562	16.7	2000
Costa Rica	63,876	1.7	2000
El Salvador	0	N.A.	N.A.
Guatemala	4,433,218	39.45*	2002
Honduras	470,027	7.2	2001
Nicaragua	443,847	8.63	2005
Panama	417,559	12.26	2010
Mexico	15,700,000	13.97	2010

\* Officially, 40 percent of the population is indigenous, while NGOs state that the figure is around 65 percent.

In terms of poverty among the indigenous population, 56 percent of Guatemala's total population were classified as poor and 16 percent as extremely poor in 2000. Out of the total poor population, 74 percent were indigenous, while 24.3 percent of the extremely poor population were indigenous.<sup>9</sup> In 2001, Nicaragua reported that 46 percent of its population was poor, with 15 percent extremely poor (World Bank, 2003). Although there are no statistics on the economic situation of the country's indigenous populations, municipal data from the 2001 report indicate that the autonomous regions of the Atlantic and its coast are part of the areas most severely affected by severe poverty. These regions are inhabited by mainly Miskito and Afro-descendent population. In Honduras, 50 percent of the population lives in rural areas, and 74 percent of that population are poor (71 percent of these people are indigenous). As of 2010, 46.2 percent of the total Mexican population were poor (52 million) (National Council for the Evaluation of Social Development Policy (CONEVAL), 2010).

<sup>9</sup> Government of Guatemala, Planning and Programming Secretariat (SEGEPLAN): <http://www.segeplan.gob.gt>.



The states of Oaxaca and Chiapas, which constitute the Mesoamerican area referred to in this document, were among the country's seven poorest federal entities.<sup>10</sup> As in Nicaragua, Panama has no recent statistics on indigenous poverty; in 2003 it was estimated that 98.4 percent of people in indigenous areas were living in extreme poverty.<sup>11</sup>

The main language families of the indigenous groups in the Mesoamerican region are Maya, Nahua, Oto Manguéan, Miskito,<sup>12</sup> Chibchan, Choco and Arawakan (Afro-descendent languages including Garífuna and Creole). Groups using the first three language families are of Mesoamerican origin, while the Miskito, Chibchans and Choco are the result of ancient migration processes from South America and the Caribbean (Duverger, C., 2007). The Garífuna descend from African slaves who freed themselves from French and British colonizers in the Caribbean and migrated to the north of the region's Atlantic coast to Belize, Guatemala and Honduras. They can also currently be found in Nicaragua.

### 2.3 Natural resource management and tenure systems of indigenous populations living in forest areas of Costa Rica, Guatemala, Honduras, Mexico, Nicaragua and Panama<sup>13</sup>

As in the rest of Latin America, in Mesoamerican countries many indigenous peoples live in forest areas. The analysis in this part of the document will concentrate on groups living in the areas of Mesoamerica with the greatest forest areas in the countries considered: Costa Rica Guatemala, Honduras, Mexico, Nicaragua and Panama. Table 5 and Map 2 show the composition and distribution of indigenous peoples in the Mesoamerican region.

**Table 5. Main forest areas with indigenous population in Mesoamerican countries**

Country	Indigenous forest areas	Language family	Indigenous peoples
Mexico	Chiapas: Lacandona forest, Sierra Madre Oaxaca: Chimalapa forest, Sierra Norte, Papaloapan isthmus and basin	Maya Oto-Manguéan Zoque-Mixe	Tzeltal, Tzotzil, C'hol, Tojolabal, Lacandón Zapotecos, Mixtecos, Chinantecos, Mazatecas y otras etnias Mixe, Zoque
Guatemala	Maya Biosphere region (Petén) Departments of Huehuetenango; Quiché; Alta Verapaz and Izabal.	Maya Maya Arawakan	Q'eqchi, Mopán Maya Akateko, Ixtatán Chuj, San Sebastián Coatán Chuj, Q'anjob'al, Nebaj Ixil, Chajul Ixil, Q'eqchi', Poqomchi Kiché, Awakateko, San Juan Cotzal Ixil, Uspanteco, Jakalteco, Mam, Tectiteco, Sacapulteco, Garífuna
Belize	Nationwide	Maya Arawakan	Kekchi, Garífuna
Honduras	Departments of Gracias a Dios, Colón and Olancho; including the Río Plátano Reserve	Misumalpan Chibchan, Arawakan	Misquitos, Tawahkas, Pech Garífuna
Nicaragua	Atlantic coast: North Atlantic Autonomous Region (RAAN) and the South Atlantic Autonomous Region (RAAS), Río Coco	Misumalpan Chibchan Arawakan	Misquitos, Sumu-Mayangna, Rama Garífuna
Costa Rica	Indigenous reserves recognized and defined in 1977, located in the east and centre of the country	Chibchan	Bri-Bri, Cabecar, Maléku Jaíka, Ngäbere (Boruca y Teribe)
Panamá	Kuna-Yala Comarca Kuna-Madungandí Comarca Kuna-Wargandí Comarca Emberá-Wounaan Comarca Darién Ngöbe-Buglé Comarca Lands of the Naso-Teribe (north east) Lands of the Bri-Bri	Chibchan Chibchan Choco Choco Chibchan Chibchan Chibchan	Kunas Kunas Emberá; Wounaan Emberá; Wounaan Teribe, Ngöbe, Buglé Naso, Teribe Bri-Bri

Source: Produced on the basis of *Ethnologue, Languages of the World*, consulted in July 2012.<sup>14</sup>

<sup>10</sup> Mexico has 32 federal entities, including the Federal District (the country's capital).

<sup>11</sup> Living Standards Survey by the Social Policy Directorate of the Ministry of Economy and Finance, 2003.

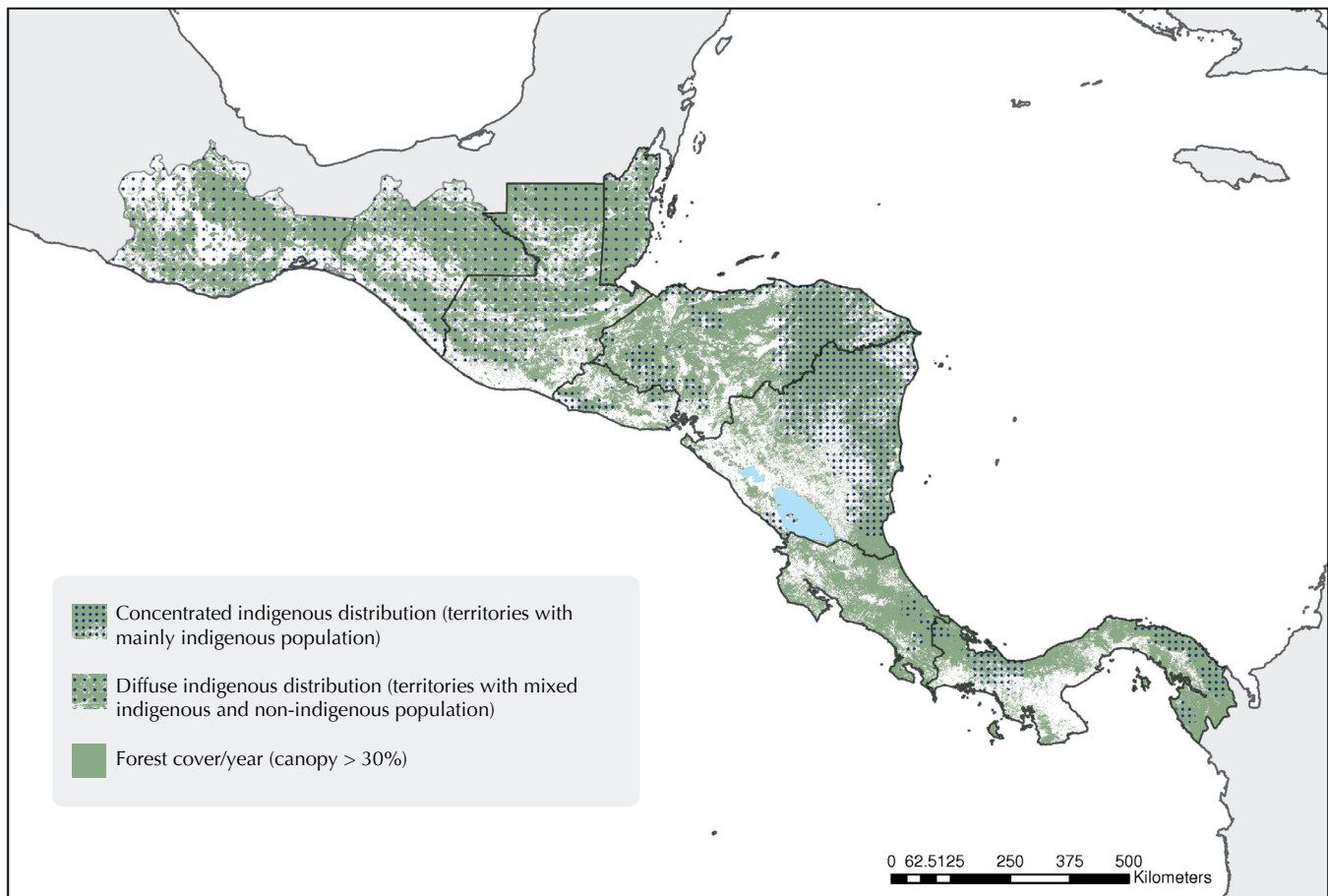
<sup>12</sup> The Miskito group currently covers the Pech and the Tawahkas, who live in the Biosphere region in Honduras and Nicaragua.

<sup>13</sup> Much of the analysis in this section is based on Herrera Garibay, Adriana. Central America Indigenous Peoples Lands Issues with focus on Guatemala, Honduras, Nicaragua and Panama. FAO contribution to the World Bank Land Policy Notes. Rome, 2008.

<sup>14</sup> Website: [http://www.ethnologue.com/country\\_index.asp](http://www.ethnologue.com/country_index.asp).



MAP 2. Distribution of the indigenous population in the forests of the Mesoamerican region



**Sources:**

- Canopy, MODIS Vegetation Continuous Fields
- Hansen, M., R. DeFries, J.R. Townshend, M. Carroll, C. Dimiceli, and R. Sohlberg (2006), Vegetation Continuous Fields MOD44B, 2001 Percent Tree Cover, Collection 4, University of Maryland, College Park, Maryland, 2001.
- Associated Peer-Reviewed Publication: Hansen, M., R.S. DeFries, J.R.G. Townshend, M. Carroll, C. Dimiceli, and R.A. Sohlberg (2003), "Global Percent Tree Cover at a Spatial Resolution of 500 Meters: First Results of the MODIS Vegetation Continuous Fields Algorithm", Earth Interactions, Vol 7, No 10, pp 1-15.

**Database source:**

- Global Land Cover Facility, [www.landcover.org](http://www.landcover.org).

Traditional systems of settlement, tenure, production and use of natural resources were dramatically affected by Spanish colonizers, who encouraged a displacement of indigenous peoples into remote areas so that they could appropriate the best land through *encomiendas* (trusteeships). In the Atlantic Region of Honduras and Nicaragua, colonization processes were based on British colonization of the Caribbean. In the post-colonial era, the formation of States led to the nationalization and municipalization of indigenous territories. In the late nineteenth century, many territories were sold to national and foreign investors. Such territories were also affected by agrarian settlement programmes carried out in the first part of the twentieth century and the agrarian reforms carried out with the support of the Alliance for Progress<sup>15</sup> in the period 1960–1981 (apart from in Mexico (1939) and Guatemala (1953)). Lastly, the civil wars in El Salvador, Guatemala and Nicaragua had a significant impact on the forms of common property and traditional collective use of natural resources maintained by most indigenous peoples in forest areas of Mesoamerica.

**Nicaragua.** The Atlantic coast of Nicaragua is home to over 50 percent of the country's indigenous population. The Miskito, Sumu-Mayangna, Mestizo, Creole, Garifuna and Rama peoples form a rich ethnic, linguistic and cultural universe in the area. Their traditional forms of managing natural resources, such as shifting cultivation, hunting, fishing, mining and wood production, have been changed by many factors, including population increase (indigenous and migrant) in territories; spontaneous colonization processes on the Pacific coast and central areas; settlement programmes; and intensive illegal felling.

<sup>15</sup> Especially those carried out in Guatemala, Honduras, Mexico and Nicaragua.



This part of the Nicaraguan coastal territory has been politically important, not only because of its cultural wealth and biodiversity, but also because it has been a hub for spontaneous colonization and expansion of the agricultural frontier for former Nicaraguan revolutionary fighters; government land-distribution programmes to establish settlements; and illegal felling. These processes have been facilitated by the lack of delimitation and legal recognition of ancestral rights over the territories of indigenous communities, and have dramatically influenced deforestation in the area.

The Atlantic Coast also includes special regime areas of Alto Río Coco, North Atlantic Autonomous Region (RAAN) and the South Atlantic Autonomous Region (RAAS), which were set up in 1987 through Law 28 – Autonomy Statute for the regions of the Atlantic Coast of Nicaragua. This law gave such regions political and administrative autonomy, as well as the power to resolve the demands of indigenous peoples to have their ancestral rights over territories recognized. The type of autonomy granted by the law does not allow secession from the national territory. The administrative part governed by a Regional Council, comprising the authorities of the Community Authorities, Regional and Municipal Council, does allow for the autonomous administration of these regions. This type of territorial administration, along with Law 445 of 2002 (Law on the Communal Property Regime of Indigenous Peoples and Ethnic Communities in the Autonomous Regions of the Atlantic Coast of Nicaragua), has seen the materialization of the government's efforts to facilitate the delimitation and entitlement processes for indigenous RAAN and RAAS territories, under an inter-community arrangement.

By mid-2012, 17 of the 23 territories earmarked for titling by the Government of Nicaragua had been titled in RAAN, RAAS and special regime areas of Alto Río Coco on the border with Honduras. Titling has benefited 250 communities of indigenous and Afro-descendent peoples over an area covering 22 478 996 km<sup>2</sup> (17.3 percent of the national territory). This area accounts for 60 percent of the total indigenous territory to be defined and titled on the Atlantic Coast.<sup>16</sup>

The progress of the titling process on the Atlantic Coast of Nicaragua is highly important for the REDD+ initiative, as well as for stopping deforestation processes, as 70.61 percent of the country's tropical forests (3.5 million hectares) are in the Atlantic region (with 41.69 percent, or 1.9 million hectares, in RAAN and 28.92 percent, or 1.6 million hectares, in RAAS). Out of the 72 protected national areas, about a dozen are in the RAAS and RAAN regions (some of the country's largest protected areas include the Bosawas and Indio Maíz Biosphere Reserves and the Wawashang, Cerro Silva and Punta Gorda Natural Reserves). As stated in previous paragraphs, deforestation in the Atlantic area is the result of the expanding agricultural frontier, government settlement programmes promoted as part of land distribution policies and illegal felling. However, it is also the result of the overexploitation of forest resources and the advance of rubber crops for export carried out by certain international companies from the first half of the nineteenth century. According to information from Nicaragua's National Forestry Institute, over the past decade the country has lost an average of 70 000 hectares of forest mass per year.<sup>17</sup> This represents an annual deforestation rate of 2 percent in the period 2000-2010, which is 0.3 percent higher than the rate observed in the country for the period 1990-2010 (FAO, 2011b).

Apart from the conflicts in the RAAN and RAAS regions that have already been mentioned, there remain other disputes relating to the borders between neighbouring communities in terms of titles issued between 1915 and 1925 by the Mosquitia Titling Commission that are standing in the way of current efforts to define and title territories.

**Honduras.** Geographically, the region of Mosquitia and the east of Honduras include the Departments of Gracias a Dios, Colón and Olancho, which are home to the Miskito, Tawahka and Pech peoples, who make up 13 percent of the country's total indigenous population. According to 2001 census data, the Miskitos (93 percent) are the largest population group in this area.<sup>18</sup> This region is important for REDD+ because of the expanse of tropical forests located there, their biodiversity and the scale of protected areas. The Department of Gracias a Dios alone (the location of Mosquitia) has an area of 16 630 km<sup>2</sup>. The region as a whole is home to around 80 percent of the species of flora and fauna in Honduras, and includes the country's largest system of protected areas (FAO, 2011b),<sup>19</sup> including the 243 126 hectares of the Tawahka Asangni Biosphere Reserve, Río Plátano Man and the Biosphere Reserve and the Patuca National Park. These reserves form the Central American Biological Corridor, which is the most biodiverse region in the Central American Isthmus.

<sup>16</sup> R-PP of Nicaragua, 2012.

<sup>17</sup> This information does not include losses caused by natural disasters, such as deforestation caused by Hurricane Felix in 2007, which destroyed around 510,764 hectares in RAAN alone.

<sup>18</sup> Miskito peoples make up 11.7 percent of the country's total indigenous peoples.

<sup>19</sup> Honduras is one of the six Latin American and Caribbean countries with the highest proportion of national forest land dedicated to protected systems.



Among the Miskito, who are the region's largest ethnic population, only 10 percent of the population have secondary or vocational education. In the mid-1970s, the Miskito formed a second-level organization to represent the 11 organized bases or areas of Miskito groups (Mosquitia Asla Takanka- MASTA). This organization is the country's main ethnic group authority, and its aim is the integration and organizational strengthening of all Miskito groups in Honduras.

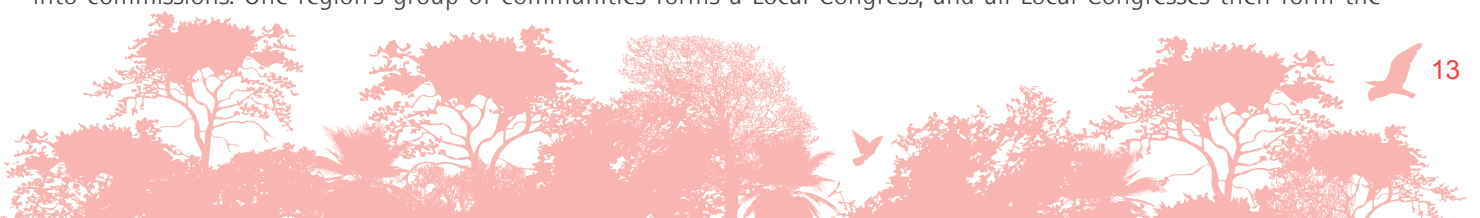
Given the educational training among the Miskito, there has been considerable migration towards cities or paid work sources in coastal cities. In terms of the indigenous population who continue to carry out production activities in the region of Mosquitia and east Honduras, they tend to maintain the collective use of natural resources, including communal tenure of land and pools. This traditional collective management of resources has been changed by the increasing incursions of professional hunters, gold prospectors, rising illegal felling and a strong mestizo colonization that involves people removing trees to raise livestock and grow crops. Such situations cause serious social and economic conflict in the region, which is encouraged by a lack of demarcation and legal recognition of land tenure.

According to FAO data, in the period 2000-2010 Honduras lost around 120 000 hectares of forest per year, which is an annual rate of 2.1 percent of the country's total forest area (5.19 million hectares). Despite the 0.3 percent reduction in the annual rate of deforestation observed in the previous decade (1990-2000), Honduras maintains the highest deforestation rate of Central American countries (FAO, 2011b). This deforestation, especially when due to the advance of the agricultural frontier by colonizers and illegal felling, is aggravated by a lack of clarity concerning ownership rights over land and its boundaries (as in disputes over use of resources). The recent increase in violence associated with illegal drug trafficking along the coast and the border region with Nicaragua has caused other types of conflicts involving drug traffickers, indigenous people and soldiers.

Although the community represents the basic level of territorial recognition for the Miskito and Tawahka indigenous groups, traditional use recognizes the existence of a communal territory or functional habitat for a group of communities sharing the use of land and natural resources. In this framework, the demarcation of indigenous land by the community involves a great number of areas of overlap, which makes it difficult to attribute a precise territory to each community. Over the years, and with support from MASTA, territories for between 10 and 30 communities have been recognized. In 1997, the National Agrarian Institute titled 5 138 hectares under the communal lands arrangement for 4 communities from the Tawahka people of the Department of Olancho. In 2004, the Government established a new reserve of 250 800 hectares adjoining the Río Plátano reserve for the Tawahka Asangni peoples. The ownership of these territories still belongs to the Government. Based on the Property Law and with funding from the Government of Honduras and the World Bank, 2004 saw the launch of the Honduras Land Administration Project (PATH), which since 2010 has worked to demarcate and collectively title the land in the Mosquitia area of the Department of Gracias a Dios. The aim is to use the inter-community arrangement to demarcate and title three territories (Katainasta, Fitzmos and Ahuya Yari) for 50 Miskito communities. By mid-2012, the Honduran Government, through the National Agrarian Institute and the Property Institute, had demarcated and titled the territory of Katainasta in the coastal corridor of Karataska Lagoon, covering an area of 54 000 hectares (100 000 hectares including bodies of water). In addition, the project on Land Planning and Environmental Protection in the Río Plátano Area (PROTEP), which has funding from the German Government, hopes to use the same arrangement to title 9 Mosquitia territories in the Department of Gracias a Dios. However, this inter-community titling arrangement does not recognize, as is the case in Nicaragua, the legal existence of the territory itself and its governance bodies, which forces inhabitants to set up civil or cooperative societies to register titles.

**Panama.** Indigenous peoples account for 12.7 percent of the country's total population and come from the tropical forest areas in the east and west of Panama. The country has seven ethnic groups: Ngöbe, Buglé, Kuna, Embera, Wounaan, Naso-Teribe and Bri-bri. Apart from the latter group, 50 percent of the country's indigenous peoples live in rural areas.

One of the most striking aspects of Panama's indigenous peoples is their social structures. The structures have traditionally formed the basis for the political and administrative organization of their territories, and have proved sufficiently flexible to adapt to the country's current social and political structures. Their social structures maintain their ways of managing natural resources and their sense of belonging to the community and territory. Among the Kuna people, groups are organized into communities led by a chief, or *Sahila*. For the development of public works, the community organizes itself into commissions. One region's group of communities forms a Local Congress, and all Local Congresses then form the





General Congress. Unlike the Kuna, the Ngöbe people live in a smaller territory and are opposed to forming communities, fearing competition for the use of natural resources. They tend to live in small settlements known as *caseríos* (hamlets), consisting of kinship groups. They are administratively and politically governed by the chief of the kinship group. Within a territory, a group of *caseríos* is governed by the Local Congress, which is headed by a *cacique* (or chief). Territories are divided by regions, each governed by a regional *cacique*. The main authority in the territory is the General Congress, formed by regional representatives and led by the General *Cacique*.

Panama has a total area of 7 434 000 hectares, 44 percent of which is tropical forest (3 251 000 hectares). The 1.2 percent deforestation rate experienced by the country between 1990 and 2000 dropped to 0.4 percent in the period 2000-2010, which is a reflection of the importance that the Government has attached to the country's tourism and environmental development. It also reflects the gradual expansion of the size of protected areas, which grew from 43 to 70 between 2000 and 2008 (FAO, 2011b).

The causes of deforestation relate mainly to unbridled tree felling for the development of extensive livestock farming, especially in Darién in the far south of the country. Deforestation is also due to the lack of planning as part of territorial and urban development, which has been a major factor in the creation of new tourist settlements in forests and agricultural areas.

In terms of land tenure, Panama's indigenous peoples have been extremely active in the struggle for recognition of their cultural identity and territories. In accordance with Panama's 1972 Constitution, which recognizes that indigenous peoples' lands must be allotted for ownership and not user rights, the Government has legally recognized five territories of indigenous peoples, with their own legal status, and a surface area that covers 22 percent of the total national territory (and is home to 54 percent of the country's indigenous population).

**Table 6. Indigenous comarcas by group and total areal**

Comarcas	Total area (km <sup>2</sup> )	Percentage (%)
Kuna-Yala	2,393.10	14
Kuna-Madungandí	2,318.80	14
Kuna-Wargandí	778.30	5
Emberá-Wounaan	4,398.00	27
Ngöbe-Buglé	6,673.30	40
Comarcas total	16,561.50	100

Similarly to the autonomous regions in Nicaragua, the indigenous *comarcas* in Panama have political and administrative autonomy. Their internal organization and government are run by the authorities and traditions of the ethnic groups living in each *comarca*. These authorities are legally recognized by the national Government and have close links with the government representatives assigned to each *comarca* to support its traditional authorities in administrative tasks. In the case of the Kuna peoples, it is they and not the Government who elect the person to be the government representative. The representative is elected from within the Kuna community. Two of the *comarcas* have Provincial status, and each has a representative in the National Assembly. The remaining three *comarcas* have District status and have representatives on the boards of the District and Municipal Government.

Notwithstanding the importance of their administrative status, the physical delimitation of some *comarcas* has not been finalized. The demarcation of the Ngöbe-Buglé *comarca* by the National Land Administration Programme has encountered many problems in terms of implementation, including disputes about the *comarca* boundaries with landowners outside the *comarca*, as well as inhabitants therein. There are also some peoples who have not achieved recognition for their lands, such as some in the Naso and Bri-Bri communities, some Emberá and Wounaan communities (in Darién and Alto Bayano), and some Kuna (Takarkunyala) communities (Ortiz-T. *et al.*, 2010). The revival of the land market in Panama over the past five years has triggered an interest among tourist and real estate companies in indigenous *comarca* territories, and in some cases this has resulted in illegal agreements for tourist developments with foreign companies. In recent years, indigenous peoples (particularly those in the Ngöbe-Buglé *comarca*) have spoken out against the Government initiative to build a dam on the south-east border of the *comarca*.



**Costa Rica.** Unlike the rest of the countries in Mesoamerica, the indigenous population in Costa Rica accounts for just 1.7 percent of the country's total population. The 2000 census identified eight indigenous peoples: seven of Chibcha origin (Huetar, Maleku, Bri-Bri, Cabecar, Brunca, Guaymí) and one of Mesoamerican origin (Chorotega), and these are located in the east and central parts of the country.

Costa Rica has a total surface area of 51 100 km<sup>2</sup>, of which 70 percent is forest land. Within that proportion, 26 percent is made up of protected areas. The country has three types of forest with different regimes of tenure and land ownership: public, private and communal or indigenous.

**Table 7. Forest tenure regimes in Costa Rica, 2007**

Type of forest	Rights regime and type of forest management	Forest area (hectares)	Percentage (%)
Public forests	Absolute restriction (only usage permits awarded)	1,104,773.7	45
Private forests	Exclusively managed by owner in accordance with a management plan	557,771.67	22.5
	Payment for Environmental Services, based on agreement specified with State	500,706	20.6
Communal/indigenous forests	Joint forestry management by communities, with no possibility of selling wood	282,866.93	11.9
Total forest area		2,446,118.93	
Communal/indigenous forests	Payment for Environmental Services, based on agreement specified with State	37,442 (protection) 90 (reforestation) 305,694 trees (agro-forestry systems)	

Source: Ulate Chacón E. 'Implicaciones de la tenencia y la gestión forestal en la reducción de la pobreza en Costa Rica' in FAO, Forest tenure in Latin American countries: an overview. FAO, Rome, 2009.

Indigenous forests make up 11.9 percent of the country's total forest area (282 866.93 hectares), and are located in indigenous reserves that have been recognized and defined by Article 2 of the Indigenous Law of Costa Rica (1977). This Law, which recognizes the rights of indigenous peoples living on the land, has facilitated the titling of 24 indigenous reserves covering 5.9 percent of the national territory. The land titling rights over the reserves are collective and allocated to the indigenous peoples once they have set up Associations for Integral Indigenous Development (ADII), under which the ownership title is registered. ADIIs can be set up by several communities, as in cases of inter-community titling. The land and the resources in the reserves are inalienable, imprescriptible and for the exclusive use of communities. Resources are used by the community with the authorization of ADIIs, which are in turn overseen by the National System of Conservation Areas. There are legal restrictions on the sale of wood products in such territories.

Two important characteristics of this country's forestry sphere are the levels of reforestation achieved thanks to the 1986 Forestry Law and the incentive policy to promote forest plantations and reverse deforestation processes. While Costa Rica's forest coverage fell from 75 percent to 21 percent in the period 1940-1987 as a result of colonization and the expansion of the agricultural frontier for extensive livestock farming and crops (coffee, banana and sugarcane), the publication of the Forestry Law in 1986 caused forest coverage to increase, and had doubled by 1997 and increased by a further three percentage points (to 45 percent) by the year 2000. By 2010, the percentage forest cover had risen to 51 percent, and the deforestation process had been reversed, with Costa Rica posting a reforestation rate of 0.9 percent for that year (FAO. 2009c).



In terms of incentive policies, Costa Rica is a Mesoamerican example of implementing PES schemes set up as part of a mechanism provided for under the 1996 Forestry Law 7575. PES are financial mechanisms that pay private owners (including indigenous peoples) for environmental services. Payment is made from the National Forestry Financing Fund (FONAFIFO). Payment is per hectare/per year and varies according to the service provided. As of 2005, indigenous reserves were protecting a carbon supply of 85 495 gigatonnes of CO<sub>2</sub>, of which 2 349 gigatonnes were produced through the recovery in forest coverage during the period 2000-2005.<sup>20</sup> Out of the 24 ADIIs, 20 maintain contractual PES links with FONAFIFO.<sup>21</sup> Chapter four analyses the experience of implementing PES in Costa Rica's indigenous territories.

The ADIIs are also linked to regional environmental protection initiatives. The eight ADIIs in the Talamanca region that belong to the Bri-Bri and Cabecar peoples are part of the Caribbean regional ADII network. In the South Pacific region, 12 ADIIs are working with solidarity tourism activities and ecological tours organized by the Regional Aboriginal Association of Dikes.<sup>22</sup>

Disputes in indigenous territory occur when reserves have their land invaded by people from outside the communities, or in the event of illegal felling and the construction of hydroelectric dams (as with the Diquis hydroelectricity plant).

**Guatemala.** The Maya Biosphere region in El Petén and the Departments in the north of Guatemala (Huehuetenango, Quiché, Alta Verapaz and Izabal) are the areas with the country's largest forest mass, and natural resources here are communally managed by a large number of indigenous communities.

The Petén Department, the location of the Maya Biosphere, is home to about 50 percent of the country's total forest mass. The rest of the country's five northern departments contain 30 percent of the national total. Taken together, the five northern departments in Guatemala contain 80 percent of the country's forest mass. According to data from Table 8 for the period 2001-2006, Guatemala maintained an annual deforestation rate of 1.16 percent, with a significant contribution from the Departments of Izabal and Petén. El Petén in particular experienced an annual rate of forest mass loss of 1.79 percent during that period, which means total losses of 268 602 hectares. In the Department of Izabal, the annual deforestation rate between 2001-2006 was 3.01 percent, which represents a total loss of 43 587 hectares of forest mass during that period.

The causes of deforestation in Guatemala, and particularly in the north of the country, are mainly based on: changes in land use (especially for agricultural purposes); illegal timber felling (especially mahogany in the forests of Petén and some areas of Izabal); and the advance of the agricultural frontier in line with increasing new settlements in the wake of the civil war. In the northern areas of Guatemala, (and Petén in particular), migrants from the east or those returning from Mexico after the 36-year civil war ended in 1996 have developed extensive livestock farming and subsistence farming based on slash, fell and burn. This has significantly contributed to deforestation in the area.

**Table 8. Forest coverage, net change and rates of change at the departmental level, selected departments (2001-2006)**

Department	Coverage 2001 (hectares)	Coverage 2006 (hectares)	Percentage of national coverage 2006	Net change 2001-2006 (hectares)	Annual rate of change (percent)
Alta Verapaz	377,950	391,379	10.12	13,429	0.62
Huehuetenango	219,957	235,291	6.08	15,334	1.34
Izabal	289,714	246,127	6.36	-43,587	-3.01
Petén	2,192,096	1,923,494	49.75	-268,602	-1.79
Quiché	276,267	276,255	7.14	-11	0
<b>Subtotal for selected departments</b>	<b>3,355,984</b>	<b>3,072,546</b>	<b>79.45</b>	<b>-283,438</b>	<b>-----</b>
National total	4,152,051	3,866,383	100	286	-1.16

Source: Universidad del Valle, Guatemala, National Forestry Institute, National Council for Protected Areas, Universidad Rafael Landívar. Mapa de la Cobertura Forestal de Guatemala 2006 and Dinámica de la Cobertura Forestal 2001-2006. Guatemala, March, 2011. pp.31.

<sup>20</sup> R-PP-Costa Rica, San José, Costa Rica, 2010.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.



**Table 9. Communal lands – number of groups and land area in northern Departments of Guatemala, 2008**

Department	Number of communal groups	Hectares
Alta Verapaz	136	159,521
Huehuetenango	127	65,630
Izabal	48	264,230
Petén	38	512,276
Quiché	82	205,819
Subtotal for northern Departments	431	1,207,476
National total	1,213	1,577,129

Source: Based on the National Council for Protected Areas. *Estrategia Nacional para el Manejo y Conservación de Recursos Naturales en Tierras Comunales*. Guatemala. 2011, pp. 10.

The area's population are basically of Mayan and Ladino origin, with the exception of the Garifuna, who live in the port of Livingston, Izabal. Petén's current indigenous population is mainly from the Department of Alta Verapaz, and is the result of migration to the area over the past 20 years. In 2007, this population (mainly from the Q'eqchi and Chorti ethnic groups) was estimated to make up 18 percent of the total Petén population (Palma, 2007). Despite being migrants, the indigenous population in El Petén maintain the communal administration of their territories. The Maya communities in the remaining four northern departments of Guatemala maintain communal use of the forests in the form of communal lands that, in some cases, were allocated to them by the Government when they registered as non-profit civil associations.

Although the Mayan people in Guatemala were dispossessed of their ancestral lands centuries ago, they still maintain their cultural values, ceremonies and traditions. The current tenure of their lands has been shaped by models introduced in the post-colonial period, as well as those developed by the government in the 1944–1954 revolutionary period, which introduced protection for communal lands (prohibiting their sale, seizure or dissolution). Agrarian reform and agricultural colonization and land access programmes from the 1960s all influenced traditional forms of communal use through collective use arrangements (municipal common lands, agriculture cooperative, collective agrarian property and peasant associations). According to information from the National Council for Protected Areas, in 2008 Guatemala had a total of 1 213 groups on communal land covering 14.7 percent of national territory. The 431 communal groups in the country's northern Departments represent 35.53 percent of the national total, and cover 76.56 percent of the national territory with communal tenure.<sup>23</sup>

The country's northern departments have developed two ways of managing forest resources based on communal management: community forest concession proposed by the Government in 2000 for indigenous community management of Petén lands in the Maya Biosphere Reserve; and communal forest land management on the part of indigenous and peasant groups in the Departments of Alta Verapaz, Huehuetenango, Izabal and Quiché.

The community forest concessions model in El Petén arose as a means of recognizing the settlement rights of mestizo and indigenous migrants in buffer zones or areas close to protected areas in El Petén, thereby avoiding land disputes in the area. Concessions are not based on ancestral forms of resource management. They are a 25-year contract between the Government of Guatemala and a community organization that ensures rights of use, access, management, extraction and exclusion for wood and non-wood resources. The ownership rights in these contracts belong to the State, and exclude the possibility of sale or transfer of concession rights (CIFOR, FLACSO, 2009). Concessions range from 3 500 hectares to over 50 000 hectares, and include the participation of municipalities to support administration and dispute settlement. According to studies carried out into some of the region's groups (CIFOR, FLACSO, 2009), the management of non-wood resources, such as extraction and exploitation of *Chamaedorea* palm (*xate*), rubber (*hule*) and gum (*chicle*), is based on community and family relations using informal local rules – and this results in sustainable management of resources.

Land tenure disputes remain a major obstacle to rural development in Guatemala. According to the Secretariat for Agrarian Affairs, in 2009 there were 1 435 unresolved disputes involving 1 255 253 people. Most disputes concern the northern fringe of the country and El Petén. The reason for the high number of disputes in this department may be due to its recent inclusion as an expansion area for the agricultural frontier and the way in which land was distributed.

<sup>23</sup> These figures are not completely accurate, as recent studies carried out by the Land Registry show that some communal lands described by the National Council for Protected Areas no longer fulfil these characteristics, while others not described as such at the time, now do fit into that category.



To protect communal forms of tenure, regardless of their legal status, while avoiding the division of land during the updating of the land registry, the Government of Guatemala used the Land Registry to set up a specific procedure based on the 2005 Land Registry Law: the Communal Land Declaration. This procedure recognizes special forms of territory management, and the Land Registry can administratively declare it as Communal Land, and potentially provide a title to residents, provided that there has been no previous registration. This procedure is called Special Titling. To some extent, the institutionalization of the Declaration responds to the need to protect communal land management practices that may be affected by processes to update the land registry. The implementation of the Common Land Regulations has been under way since 2011, and is being carried out under phase 2 of the Land Administration Project funded by the World Bank and the Government of Guatemala.<sup>24</sup>

**Mexico.** The indigenous population in Mexico is around 10 million inhabitants, which represents 9.8 of the total national population.<sup>25</sup> Most of the indigenous population is located in six states in the centre and south-east of the country

**Table 10. Entities with the largest indigenous population in Mexico, 2005**

Entity	Total population	Percentage (%)
Oaxaca state	1,594,490	15.78
Chiapas state	1,330,981	13.17
Yucatán state	981,499	9.71
Veracruz state	975,316	9.65
Puebla state	921,655	9.12
Mexico state	839,692	8.31
<i>Subtotal</i>	<i>6,643,633</i>	<i>65.74</i>
<i>Indigenous Mexico</i>	<i>10,103,571</i>	<i>100</i>
<i>United Mexican States (total population)</i>	<i>103,236,388</i>	

Source: Produced on the basis of: National Commission for the Development of Indigenous Peoples (CDI) and UNDP. System of indicators for indigenous population in Mexico, based on: National Institute of Statistics and Geography (INEGI), Second Housing and Population Census, Mexico, 2005.

For the purposes of this study, we are considering the states of Oaxaca and Chiapas (on the south of Mexico's Pacific Coast) as being part of Mesoamerica, as they are home to 28.95 percent of the country's indigenous population. Out of the country's 62 indigenous groups, there are 13 ethnic groups in Oaxaca, and 12 in Chiapas.

Mexico is important in Mesoamerica because of its variety of ethnic groups, but also its large share of the forest area contained in all Central American forests. Mexico has 648 020 km<sup>2</sup> of forest, or 33 percent of the national territory (FAO, 2011b; FAO, 2009c).<sup>26</sup> This represents 76.9 percent of the total forest area in Mesoamerica. The states of Chiapas and Oaxaca are the country's most biodiverse. The region made up of the two states contains 8.6 percent of the national territory and 14.76 percent of the country's wooded areas (forests and jungles) (INEGI, 2011). Indigenous communities and *ejidos* in Oaxaca are widely recognized at the national and international levels thanks to the efforts in terms of ecosystem conservation and sustainable forest use systems through community forests.<sup>27</sup>

The surface area of the state of Oaxaca represents 4.8 percent of the national territory (94 290 km<sup>2</sup>), of which 54 percent (51 050 km<sup>2</sup>) is forest area (SEMARNAT, 2006). The forest area in Oaxaca includes two protected natural areas,<sup>28</sup> and its early experience in voluntary conservation is the first protection arrangement of its kind in Mexico. Oaxaca also has 89 forest areas certified for good forestry management, with a total area of 1 063 km<sup>2</sup> (mainly in indigenous agricultural units).

<sup>24</sup> Phase 2 involves updating the land registry and land regularization in 41 municipalities in the Departments of Alta Verapaz, Baja Verapaz, Izabal, Chiquimula, Zacapa, Escuintla, Sacatepéquez and Quiché.

<sup>25</sup> National Commission for the Development of Indigenous Peoples (CDI) and UNDP. System of indicators for indigenous population in Mexico, based on: National Institute of Statistics and Geography (INEGI), 12th General Population and Housing Census, 2000, and Second Housing and Population Census, 2005.

<sup>26</sup> The Mexican Secretariat of Environment and Natural Resources (SEMARNAT) classifies national forest area into two categories: (i) woodland area and (ii) other forest areas. According to these categories, the total national forest area is 141.7 million hectares, which is different from the FAO/FRA data that only consider woodland area.

<sup>27</sup> See: *Los Bosques Comunitarios de México, Manejo Sustentable de los paisajes forestales* (D. Bray, L. Merino, D. Barry), SEMARNAT, INE, UNAM, CCMSS, University of Florida.

<sup>28</sup> CONANP: Protected Natural Areas in the National System for Protected Areas.



The state of Chiapas, which borders with Guatemala, accounts for 3.8 percent of the country's territory (74 646 km<sup>2</sup>). Within that territory, 69 percent (51 481 km<sup>2</sup>) of the state is forest (SEMARNAT, 2006), including eight protected natural areas with a surface area of 9 422 km<sup>2</sup>. Protected natural areas make up 18.3 percent of the state's forest.

Although deforestation has fallen in the region over the past 20 years from 0.52 percent to 0.30 percent (FAO, 2011c), and the proportion of forest plantations rose by 5 percentage points to 6.65 percent in the same period, Oaxaca and especially Chiapas have suffered forest loss due to factors such as expansion of the agricultural frontier (particularly the introduction of pastures), illegal felling, forest fires and pests (CONAFOR, 2011). In the preliminary analysis for REDD+ preparation in the country, the Mexican National Forestry Commission showed a deforestation and degradation trend in areas with land tenure disputes, particularly in Oaxaca and Chiapas. This trend is less pronounced in areas that use land planning and forest management plans.<sup>29</sup>

Land tenure systems and ways of recognizing the land rights of indigenous populations have been influenced by historical agrarian processes in the country, land appropriation during colonial times, agrarian reform and the amendment of Article 27 of the Mexican Constitution in 1992. Article 27 of the 1917 Constitution established three type of property: small property, *ejidos* and communal property (with the latter two also known as agricultural units).<sup>30</sup> Before the above-mentioned amendment of that Article of the Constitution in 1992, they belonged to the State and were inalienable. By its nature, small private property is subject to size limits depending on type of crop and economic activity. Communal property recognizes the historical rights of indigenous communities and titles awarded to them by the Spanish Crown, giving way to permanent traditional structures of communal property. Unlike in the case of *ejidos*, communities have collective ownership of their land. Through the process of agrarian redistribution, indigenous peoples recovered some of the territories they had lost during the dictatorship of Porfirio Díaz (1876-1910), which now came under the *ejido* or communal land arrangement. Titling for both such arrangements considered indigenous communities as single entities, rather than groups of communities (indigenous peoples) living within a territory.<sup>31</sup>

Mexico's 30 000 *ejidos* and communities cover around 50 percent of the national territory, contain 75 percent of the country's forest territory, and 23 percent of them (6 800) are home to groups of indigenous speakers (Merino, 2010). Within that national total, Chiapas has 2 823 *ejidos* and communities, with a surface area covering 60.5 percent of total state territory, while Oaxaca has 1 632 *ejidos* and communities covering 92 percent of the state territory (Procuraduría Agraria (Agrarian Ombudsman), 2006).

As a result of the changes introduced to Mexican agrarian legislation when Article 27 of the Constitution was amended in 1992, the ownership rights for *ejidos* ceased to belong to the State and were assigned to their members through the *Asamblea Ejidal*. The reform of Article 27 maintains the land of communities under their ownership (as was the case previously). Although the 1992 legislation maintains the assembly of *ejidos* and communities as the highest decision-making body in terms of the sale of agricultural plots, it does prohibit the transfer, division and parcelling of *ejido* and communal woodlands and forest lands. In terms of use, indigenous *ejidos* and communities have developed various forms of managing territories, which include communal use areas and family-owned areas where agricultural and agroforestry activities are carried out. The General Law on Ecological Balance and Environmental Protection (LGEEPA), created in 1988 and reformed in 2012, gives *ejidos* and communities the right of protection, preservation, use and sustainable exploitation of natural resources, and the safeguarding and use of biodiversity. As well as regulating woodland areas, this Law also regulates protected natural areas that are often set up on community and *ejido* territory. Protected natural areas come under the National Council for Protected Areas (CONAP) and are administered through management programmes. Each protected natural area has a consultative body known as the Technical Advisory Committee, which involves members of the communities and *ejidos*, NGOs and research institutes. The management of the protected natural areas is, however, the responsibility of the government, not the owners.

In terms of land disputes, in 2006 the Agrarian Ombudsman (Procuraduría Agraria, 2006) recognized 1 248 ongoing agrarian disputes nationwide, including boundary disputes among neighbours<sup>32</sup> and internal family disputes (for reasons of inheritance).

<sup>29</sup> R-PP of Mexico, 2011.

<sup>30</sup> The *ejidos* are State lands for which user rights are given to originally landless peasants (which might include indigenous groups). Indigenous communities are territories titled in the name of indigenous peoples.

<sup>31</sup> Communities and *ejidos* are made up of a main population centre and a set territory, except in a few cases such as the communities of Chimalapas (Oaxaca) and La Lacandona (Chiapas), which are made up of various population centres in a single unit of tenure.

<sup>32</sup> Given that the initial measurements of agricultural units were made so long ago, as well as subsequent territorial extensions and invasions, there are many cases of overlap between *ejido* lands and problems among owners.

Some of these conflicts may be over 30 years old. They are more common in forest regions and among indigenous agrarian communities. The highest rates of agrarian dispute in the country are seen in the states of Chiapas, Oaxaca, Michoacán and Guerrero. Currently, land disputes are being aggravated by factors such as illegal timber extraction and drug crops, which both thrive amidst a lack of local governance seen in many disputed lands (Merino, 2010). Mexico has developed an effective alternative dispute settlement system that supports dispute settlement within groups by means of mediation processes. These methods have been hugely useful and successful in resolving the country's land disputes, particularly in the period following the reform of Article 27 of the Constitution. At present, most community disputes are solved within the community or *ejido* using assemblies, which are the groups' main decision-making body.



## CHAPTER 3

# Mesoamerican advances in recognizing indigenous territorial rights and environmental policies

### 3.1 Advances in international law

As mentioned in Chapter 1, advances in the recognition of indigenous rights in Latin America have been shaped by the development of international bodies to define indigenous rights, as well as by movements set up by local actors.

At the end of the 1980s, under pressure from various national and international agencies and indigenous peoples themselves, major advances were made in setting up an international framework for the rights of indigenous peoples, with the approval of Convention 169 of the International Labour Organization (mentioned in Chapter 1). In 1993, the United Nations Permanent Forum on Indigenous Issues (UNPFII) was set up as an advisory body to the Economic and Social Council, with the mandate to examine indigenous issues relating to economic and social development, culture, education, health, environment and human rights. In 2007, under the coordination of UNPFII, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples (mentioned in Chapter 1). At the regional level, one of the most significant and active bodies is undoubtedly the Inter-American System for the Protection of Human Rights of the Organization of American States (OAS), which consists of two bodies: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The aim of both bodies is to defend human rights in countries of the American continent through the application and interpretation of the American Convention on Human Rights, The American Declaration of the Rights and Duties of Man and other treaties on human rights to which the System is subject. Although the Declaration and the Convention do not explicitly mention indigenous peoples' rights, the Court uses other instruments such as the Vienna Convention on the Law of Treaties, human rights mechanisms and bodies of the United Nations,<sup>33</sup> Convention 169 of the ILO,<sup>34</sup> the Declaration on the Rights of Indigenous Peoples negotiated by UNPFII in 2007 and the Convention on Biological Diversity (particularly Article 8(j)),<sup>35</sup> which states that Governments shall respect the knowledge, innovations and practices of communities for the use of biological diversity).

This important international framework that was formed during the 1980s and 1990s has restated States' obligations towards indigenous peoples by supporting the construction of concepts, standards and case law based around the key topics of collective property rights and rights over land, territories and natural resources, including the right to the restitution of ancestral territories and consultation rights. Interestingly, although Panama has not ratified the Convention, it is one of the most advanced countries in Central America in terms of recognizing the rights of indigenous peoples to land and territories, including their own autonomy and traditional forms of governance. The same is true of Nicaragua, which recognized the rights of indigenous peoples in the territory of the South Atlantic and North Atlantic through Laws 28 and 445, which were both adopted before Nicaragua ratified Convention 169 in August 2010. In contrast, countries such as Honduras have ratified the Convention but have not yet approved the draft legal framework recognizing traditional indigenous land rights that was formulated in 2007.

Notwithstanding the progress represented by having a regional body that protects indigenous rights, the recommendations of the Inter-American Commission on Human Rights are not always considered by Governments (as in Panama and Belize (CIDH/IACHR, 2010)).

<sup>33</sup> The Universal Declaration on the Rights of Indigenous Peoples (approved in 2007), the United Nations Committee on the Elimination of Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and so on.

<sup>34</sup> For the Inter-American Commission on Human Rights, ILO Convention 169 is the most relevant international human rights instrument for indigenous rights. By June 2012, most States in the Mesoamerican region had adopted the Convention (except Belize, El Salvador and Panama).

<sup>35</sup> Article 8(j) calls on States to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.



### 3.2 Advances achieved by local actors

As previously mentioned, advances achieved in consolidating recognition of indigenous peoples' land rights are definitely linked to the scale of social mobilizations undertaken by indigenous peoples themselves during the 1980s and 1990s. Although such movements have existed since colonial times, during the 1980s and 1990s partnerships with national and international NGOs were conducive to significant progress being made in terms of rights relating to identity and the use of territory in ancestral lands.

Some of the most emblematic struggles of the Mesoamerican region took place in the past 20 years over rights of access, management and exclusion:

- In Guatemala, the Peace Agreements signed in 1996 led to the creation of the Land Fund (FONTIERRA), which has enabled indigenous people, small-scale producers and communities to gain access to land under different arrangements.
- The movement involving many indigenous forest communities in Mexico (and particularly the state of Oaxaca) in the mid-1980s, leading to the removal of the forest concessions system whereby the State would award exploitation permits to private or parastatal enterprises, and the establishment of a Government Programme for community forests (Chapela, 2007).
- Another struggle for the right of exclusion was fought by the Mayangna indigenous people on the Atlantic Coast of Nicaragua, who submitted their case to the Inter-American Court of Human Rights in 2001 to oppose a forest concession awarded by the Government in their ancestral lands of Awás Tingni.
- 2011 saw the first trial in which indigenous people in Costa Rica sued the State for failure to expropriate all non-indigenous persons located on their territory, as stipulated in the 1977 Indigenous Law. The first trial found in favour of the plaintiffs, and sentenced the Institute of Agrarian Development (IDA) and the National Commission for Indigenous Affairs (CONAI) to carry out the necessary procedures and studies to expropriate all non-indigenous persons from the area.

### 3.3 Development of land tenure institutions and legislation<sup>36</sup>

Before the 1970s, only Mexico and Panama<sup>37</sup> had developed a legal framework specifically dealing with the recognition of the land rights of indigenous peoples. Forest or mining concessions, the creation of protected areas and the settlement of peasant populations in indigenous territories were common threats in those countries. In other Mesoamerican countries, until the end of the 1970s, there was practically no legal protection for indigenous territories. In Costa Rica, Law 6172 was introduced in 1977 to recognize the property of indigenous communities through reserves. In Nicaragua, the statute of autonomy of the RAAN and RAAS Atlantic regions was established in 1987. In Honduras, the 1992 Law on the Modernization and Development of the Agricultural Sector included the possibility of titling for indigenous lands. In Guatemala, the 1985 Constitution recognized the rights of communities and the need for State support for their development.

Of all the agrarian reforms implemented in Mesoamerican countries, only the Mexican one successfully repaired some of the land grabs suffered by indigenous communities in the post-colonial period, when indigenous territories were either transferred to municipalities as national land or sold to landowners. Agrarian reform in countries such as Costa Rica, Guatemala and Panama had limited impact on the formation of current national agrarian structures, and little influence on the recognition of ancestral lands of indigenous peoples, while also representing a threat by promoting the advance of the agricultural frontier into indigenous lands. Chapter 2 provides a detailed analysis of the influence of policies for agrarian reform and settlements in the formation of agrarian structures and the forms of land

<sup>36</sup> For more details on the development of land tenure institutions and legislation in Mesoamerican countries, please see annex 1.

<sup>37</sup> In Mexico, recognition was granted by the Constitution and the Agrarian Reform Law that preceded the 1917 revolution. In Panama, the Kuna Ayala Comarcas were created in 1870 (when Panamá was still a Department of Colombia), while in 1928 the Constitutional Reform established the creation of comarcas.



tenure that are now having an impact on indigenous forest territories in the Mesoamerican countries covered in this study. What should be highlighted here is the importance of this historical period in the formation of agrarian reform institutions that were tasked, *inter alia*, with establishing institutional links between the government and indigenous communities. In Mesoamerican countries, it was the agrarian reform agencies that set up the institutions responsible for the management of indigenous lands in the 1960s.

As a result of structural reforms to the economies of Latin American countries in the 1980s and early 1990s, agricultural policies were seeking to improve the efficiency of the agricultural sector through the privatization of resources and production services, open market participation, development of crops with comparative advantages in national and international markets, improved technology and increased production efficiency. This had a direct impact on land policies in the 1990s, as they prioritized efficient functioning of land markets ahead of agrarian reform programmes (which had lost their impetus by then). The amendment of legal frameworks for land in the 1990s in Honduras, Mexico and Nicaragua opened the door to the sale of agrarian reform land that had been previously inalienable, and placed the emphasis on the certainty of land ownership rights, rather than facilitating access to ownership (as agrarian reform laws did in their time). These amendments to the legal framework for land were used to establish new legal frameworks to facilitate land surveying processes, modernize property records and set up more efficient property information systems.

This process had a major impact on the recognition of the ancestral lands of indigenous communities, because this was subsumed into the privilege of secure tenure over land and forests, which became the new regional priority, given the lack of accurate physical information (land registry) and legal information (records), incomplete transfer processes from some agrarian reform and the surge in disputes affecting indigenous lands. This meant that the recognition and allocation of land rights for indigenous peoples in regulations and institutions became associated with secure tenure, and therefore with the physical delimitation of territory and the development of instruments that make up the land information systems that support that security (land registry, property records and land administration systems).

As a result, from 2000 specific laws were enacted, other laws were reformed and new regulations developed to guarantee secure tenure, including:

- The Property Law of Honduras (2004) and its regulations (2011), which govern the regularization of land for indigenous and Afro-Honduran peoples, and set up the Institute of Property, which is assigned the functions of land survey and registry, as well as the titling of indigenous territories.
- The Land Registry Law in Guatemala (2005) and its regulations (2009), include the Administrative Declaration of Communal Land and give the Land Registry the power to produce declarations of communal land and facilitate the titling thereof, under the Special Titling mechanism (where the lands have not been previously registered).
- Law 72 of Panama (2008), which provides for the physical delimitation of certain indigenous territories, as well as the award of a title to those communities that were not included in the *Comarcas* when the relevant laws were adopted. The Law also tasked the National Directorate for Agrarian Reform and the Ministry for Agricultural Development with awarding collective property titles.

All of these changes in the focus of legislative frameworks and land policies that were directly or indirectly related to the land tenure of the region's indigenous peoples were determining factors in the roles of the ministerial agencies responsible for this topic vis-à-vis the indigenous populations.

As stated in previous paragraphs, during the agrarian reform of the 1960s, the allocation and recognition of the land tenure rights of indigenous populations was one of the functions of the agrarian reform agencies. Later, with the legislative changes resulting from the streamlining of land markets in the 1990s, the region's governments made efforts to modernize land administration services by comprehensively linking land registry information to property records and increasing the coordination functions and scope of institutions responsible for land administration. Whereas agrarian reform institutions tend to come under or be linked to ministries of agriculture, land registry institutions are under the umbrella of various institutions, such as the supreme court, ministry of finance and, in some cases, special ministries



that are directly answerable to the President. This complex institutional structure, along with serious bureaucratic and efficiency problems suffered by most of the region's agrarian reform institutes, and an overlap of functions and a lack of coordination among institutions, have all combined to create weak institutional situation that has a direct impact on work relating to land tenure (in terms of private property, the reformed sector and indigenous lands).

As for dispute settlement, the countries that have developed such bodies within government institutions are those that have carried out structural agrarian reforms, such as Mexico and Nicaragua, but also Guatemala, where the 1996 Peace Accords highlighted the need to move towards peace in the country. The governments of these countries have sought to develop mechanisms and human capacities to prioritize alternative dispute settlement methods, such as conciliation and arbitration or consultation and consensus mechanisms that do not involve taking cases to court.<sup>38</sup> Mexico has the Procuraduría Agraria (Agrarian Ombudsman),<sup>39</sup> which aims to settle cases through conciliation, using agrarian courts for those cases not solved by alternative methods. These bodies are currently suffering from the weakening of agrarian reform institutions, and their operational capacities are being reduced while new conflicts are appearing as part of the process to update the land registry or demarcate indigenous territories and communities.

One fundamental topical issue within indigenous affairs are the FPIC processes. According to international legislation, FPIC means the right of indigenous peoples not only to participation in decision making but also to reserve the right to consent in a free and informed manner to those actions and measures that may affect them, their cultures and their territories. In this regard, the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly in 2007 not only links the concept to various kinds of rights, but also recognizes the basis of this right of peoples, their right to self-determination – which also applies to forest resources.<sup>40</sup>

In terms of FPIC, when it comes to natural resources and land tenure, some Mesoamerican countries are working on relevant legislation. In Guatemala, there is a bill under discussion on the matter, while in Honduras the regulations for the Property Law stipulate free, prior and informed consultation but not consent, for their titling processes on indigenous land. When Mexico incorporated the concept of PES into its environmental legislation framework, in 2012 it included the concept of social safeguarding and FPIC of ejidos and communities when the mechanism is applied to indigenous peoples.<sup>41</sup>

### 3.4 Development of environmental policies<sup>42</sup>

Environmental policies emerged in the 1990s before coming to the fore from 2000 onwards. One of their main missions was to halt the advance of the agricultural frontier. In this sense, they also contributed to the slowdown in land distribution processes. One important element of the region's environmental policy has been the creation of protected areas, which have risen considerably in number between 1997 and 2011 (see table 11). Protected areas were often set up on land considered as State property or land that resulted from agrarian reform processes. Most protected areas registered as State land<sup>43</sup> overlap with indigenous territories, except in Mexico (see Map 3). Such areas have been the subject of many disputes between the bodies running these reserves and indigenous peoples. With the exception of the participation of indigenous authorities in La Amistad reserve in Bri-Bri territory (Costa Rica) and in the Technical Advisory Committee of the Montes-Azules Biosphere Reserve (Chiapas, Mexico), efforts to develop co-management experiments with native populations in protected areas are at a very early stage in the region.

<sup>38</sup> In Nicaragua, the Government has created the Alternative Dispute Settlement Directorate and the National Commission for Demarcation and Titling in the RAAS and RAAN regions with their dispute settlement bodies. In Guatemala, the Secretariat for Agrarian Affairs is responsible for such matters in many regions of the country, and sets up Dispute Settlement Roundtables.

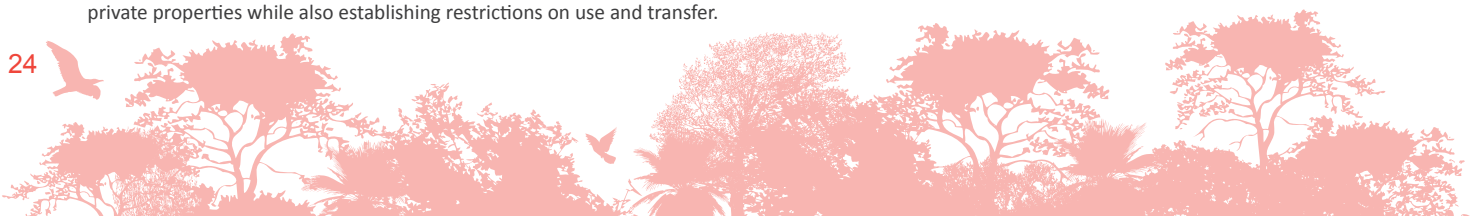
<sup>39</sup> The Agrarian Ombudsman has a team trained in conflict resolution, and the Secretariat for Agrarian Reform implements social or productive investment programmes in agricultural units to contribute to conflict resolution by compensating one of the parties.

<sup>40</sup> United Nations Declaration on the Rights of Indigenous Peoples. [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

<sup>41</sup> Article 134-Bis 2 of the Regulations for the Law on Sustainable Forestry Development reformed in 2012.

<sup>42</sup> For more details on the development of environmental policies in Mesoamerican countries, see annex 1.

<sup>43</sup> It is only in Mexico that Protected Natural Areas belong completely to *ejidos* and communities and not the State. The Government restricts use through Management Plans. In Panama, there has been experimentation with a conditional titles system within a Protected Area that recognizes the existence of private properties while also establishing restrictions on use and transfer.



**Table 11. Number and area of Protected Areas and land Biosphere Reserves in the Mesoamerican region (categories I-IV from the IUCN)**

Country	Protected Areas in 1997 <sup>a</sup>	Percentage of national territory (1997) <sup>b</sup>	Protected Areas in 2011 <sup>c</sup>	Percentage of national territory (2011) <sup>d</sup>	Percentage increase in area covered by Protected Areas between 1997 and 2011
Mexico	111	6	174	10.5	75%
Guatemala	32	28	88	31.04 (1)	11%
Honduras	50	14.3	87	17.8	24%
Nicaragua	59	6.9	72	16.1	57%
El Salvador	2	S.I	59	1.6	S.I
Costa Rica	37	25.1	168	26.5	6%
Panama	22	26.7	53	29.3	10%

Sources: International Union for Conservation of Nature (IUCN), 2011, *Biodiversidad y pueblos indios en México y Centroamérica* (1997).

<sup>a</sup> *Biodiversidad y pueblos indios en México y Centroamérica* (1997) and *Atlas Etnoecológico de México y Centroamérica*.

<sup>b</sup> Ibid.

<sup>c</sup> Las áreas protegidas de América Latina. Situación actual y perspectivas para el futuro, 2011 and updated information from Guatemala and Honduras on the following websites [http://www.conap.gob.gt/Members/admin/documentos/documentos-centro-de-documentacion/areas-protegidas/LISTADO%20SIGAP\\_DUC\\_2012\\_05\\_Publico.xls/view](http://www.conap.gob.gt/Members/admin/documentos/documentos-centro-de-documentacion/areas-protegidas/LISTADO%20SIGAP_DUC_2012_05_Publico.xls/view) and <http://www.gisaffairs.com/icf/>.

<sup>d</sup> Ibid.

Running a growing number of protected areas has forced the region's governments to set up environmental institutions, in the form of ministries of the environment. These tend to include bodies responsible for the management of protected areas, regulation and development of forest exploitation and the award of forest concessions. Ministries for the environment and their associated institutions (forestry commissions or institutes, commissions for protected areas and so on) are currently the main national counterpart in terms of preparation for REDD+.<sup>44</sup> Recently, the region's governments have begun to set up forestry incentive systems to reward conservation and good management. At the end of the 1990s, the Project for the Conservation and Sustainable Management of Forest Resources (PROCYMAF)<sup>45</sup> project in Mexico was a pioneer in community forest support in indigenous land. At the same time, Costa Rica was developing its PES system, which was later used by Mexico when it recently created the National Forestry Commission (CONAFOR). At the same time, Guatemala set up its Forestry Incentives Programme for Small Forest Landowners (PINFOR), and since 2007 has implemented an offshoot programme for small landowners including communal lands, known as the Forest Incentives Programme for Small Forest and Agroforestry Landholders (PINPEP). Despite the fact that these programmes have been funded by international cooperation, with support from the Global Environment Facility (GEF), the Netherlands, the World Bank and others, they have the full commitment of the governments in the three countries, which maintain them with a high proportion of their own resources.

Alongside the development of a new legal framework for land administration, the region's governments have also created and reformed environmental laws and regulations. All Mesoamerican countries and Mexico currently have forestry laws, environmental impact laws, wildlife management laws, water laws and rules on managing certain species. As a whole, these form a complex web of legal provisions governing the conservation, use and marketing of natural resources. Carbon is a new resource, but its link with land tenure and carbon ownership (and/or the right to benefit from its sale) remains unclear in many countries. Since 2010, Mexico and Costa Rica have developed reforms to incorporate PES into national legislation and clarify ownership rights.<sup>46</sup> According to Costa Rica, existing laws and the PES experience establish a precedent for allocating carbon rights based on land possession.<sup>47</sup>

Another relevant aspect of environmental policies from the past decade has been the decentralization efforts carried out by some countries, particularly to ensure the participation of municipal actors and local producer organizations in discussions on the design and implementation of national forestry programmes. For instance, Nicaragua has decided to strengthen forest governance by facilitating forest management processes at the district level (including in the RAAN

<sup>44</sup> See <http://www.forestcarbonpartnership.org/fcp/node/203> for the RPP and comments made by independent consultants.

<sup>45</sup> Project for the Conservation and Sustainable Management of Forest Resources funded by the World Bank and the Mexican Government since 1997.

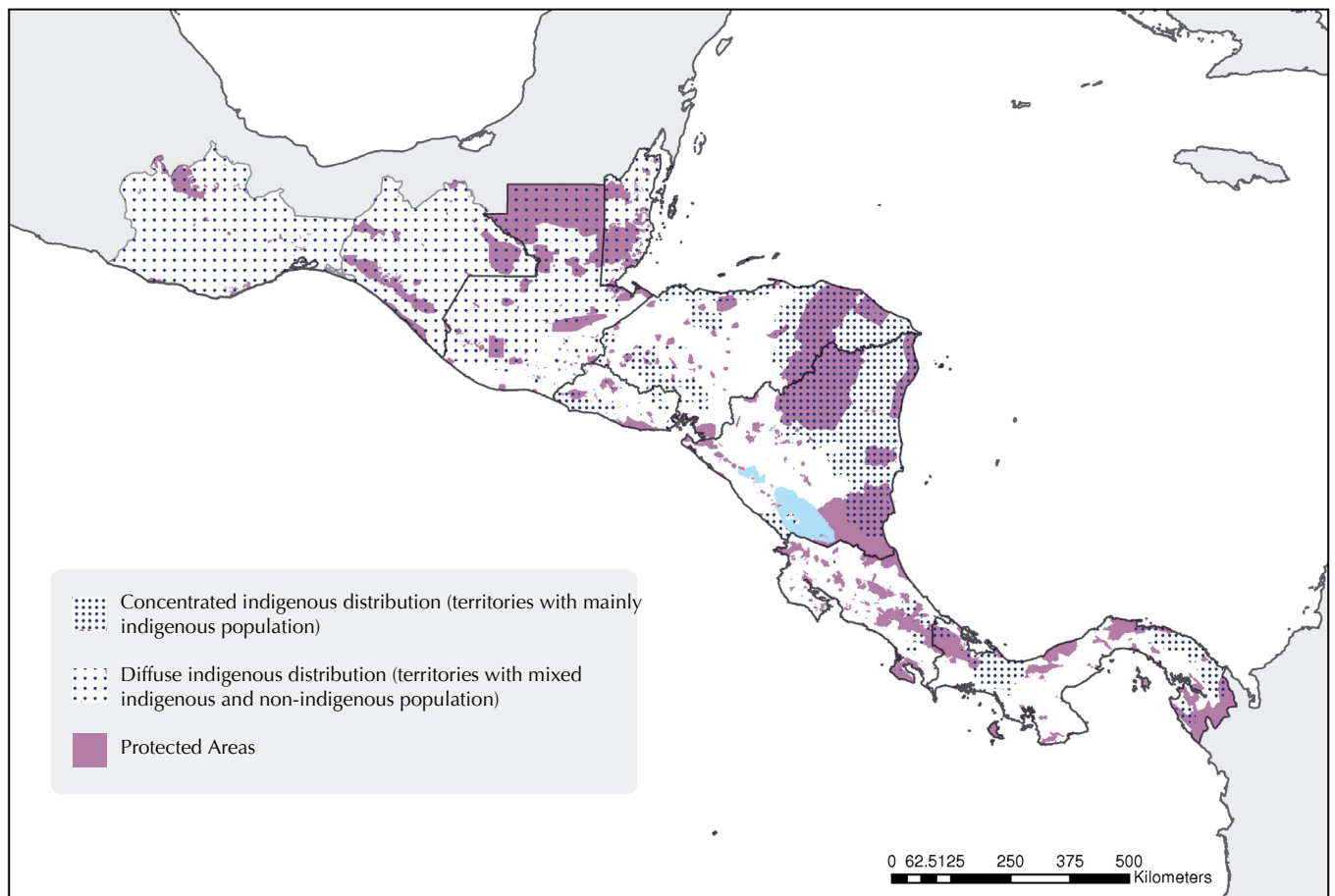
<sup>46</sup> Only Panama has legislation that clearly states that the carbon capture rights are owned by the State (Law 41, Art. 79, 1998).

<sup>47</sup> R-PP of Costa Rica 2010, <http://www.forestcarbonpartnership.org/fcp/node/203>, revised in June 2012.

and RAAS regions), thereby involving local actors in discussions on strategies and standards for wood exploitation and the strengthening of community forestry. In Mexico, the creation of Regional Natural Resources Committees and forestry associations has facilitated the participation of indigenous communities in discussions on regional forestry strategies and access to support programmes. These efforts, if they are maintained and stepped up, may form relevant schemes for the preparation and implementation of REDD+ in indigenous territories.

Lastly, it should be stated that there remain certain restrictions on forest exploitation in the region's indigenous lands, such as in Costa Rica and Nicaragua. In Costa Rica, Decree 26.511 prohibits the sale of wood species within indigenous reserves. The Forestry Closed Season Law in Nicaragua limits forestry exploitation in the RAAS and RAAN regions, which has acted as a disincentive so that indigenous communities may participate in community forestry schemes.

**MAP 3. Distribution of indigenous population in Protected Areas of the Mesoamerican region**



**Sources:**

Protected Area data:

- Protected Area data from the World Database on Protected Areas (WDPA), 2010. The WDPA is a joint IUCN and UNEP publication prepared by UNEP-WCMC (United Nations Environment Programme and World Conservation Monitoring Centre) and IUCN-WCPA (International Union for Conservation of Nature and the World Commission on Protected Areas), in collaboration with governments, secretariats of multilateral environmental agreements, non-governmental and professional organizations and individual professionals.

For more information, see: [www.wdpa.org](http://www.wdpa.org) or contact: [protectedareas@unep-wcmc.org](mailto:protectedareas@unep-wcmc.org).



### 3.5 Formulation of REDD+ proposals in the region<sup>48</sup>

As stated in Chapter 1, the region's countries have formulated their proposals for the preparation and implementation of REDD+ through their R-PPs and NDPs, which were drafted according to the FCPF or UN-REDD guidelines. These documents provide a detailed status report on forests, deforestation processes, institutional aspects, the legal framework for tenure of land, natural resources and carbon rights. They also emphasize aspects relating to the participation of indigenous territories. The documents tend to present an up-to-date picture of the processes of recognition for indigenous territories and identify a few challenges for their incorporation into consultation processes and possible support from REDD+. However, most programmes for land regularization and the strengthening of local governance include no clear commitments to dealing with issues pending.

In terms of consultation in REDD+ processes, it is worth mentioning that cooperation agencies involved with REDD+ preparation processes have received many complaints from indigenous organizations about the obstacles encountered in the consultations (or lack thereof) about preparation for REDD+ processes. In this regard, REDD considers FPIC in its social safeguards, and the R-PPs and NDPs produced by countries for REDD+ processes emphasize aspects relating to the participation of indigenous territories. In practice, however, the formulation of national documents involves operational difficulties in terms of some countries' lack of mechanisms to facilitate discussion processes at the local, provincial and national levels about forms of social organization and the content of proposals (implementation of PES, land titling, national preparation for REDD+ and so on). In addition, not all countries have the support or political will to apply the type of safeguards required for FPIC.

Another aspect that all the region's countries identified in the R-PPs and NDPs is the lack of institutional coordination as an important element to be resolved in preparing and implementing REDD+. There is weak coordination between environment ministries and other institutions responsible for rural development, disaster protection or land administration.

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<sup>48</sup> In annex 3, see summary of contents of REDD+ preparation documents in the Mesoamerican region, in terms of the participation of indigenous territories in the REDD+ initiative.



## CHAPTER 4

# Lessons learned from community forestry initiatives, payment for environmental services and other incentives

Most countries in the Mesoamerican region have initiatives that have tested economic instruments and organizational systems that contribute to the conservation and good management of forests through community enterprises or PES systems. These have been promoted by indigenous and peasant communities and have received funding from international cooperation and national governments. Such initiatives began around 20 years ago, and represent a rich source of learning that is useful for the future implementation of REDD+.

Schemes were originally focused on subsidizing forest conservation through the creation of protected areas, but have moved towards the strengthening of community forestry initiatives (in communal forests or concessions), agroforestry and PES. Some such initiatives, which were piloted with international cooperation funding, gradually became national programmes – particularly in Costa Rica, Guatemala and Mexico. In other countries in the region, national governments had more specific involvement, either in developing or regulating the initiatives. One of the most important contributions of such specific participation is the increasing involvement of municipalities (particularly in PES initiatives).

**Table 12. Initiatives for forest management and conservation in the Mesoamerican region**

	Programme	Type of initiative	Sphere	Financial resources
Mexico	Pro-Árbol (Pro-tree)	PES for water, carbon, biodiversity and agroforestry system	National	National resources from dam administration, other contributions from municipal and private sources, international cooperation, loans from the World Bank
	Pro-Árbol/PROCYMAF	Support for community forestry	National	National resources and World Bank loans
Guatemala	PINFOR and PINPEP	Forestry incentive programmes for small forest landowners (conservation, management, agroforestry systems)	National	National resources and international cooperation (IDB, support from the Netherlands and Spain and so forth)
	PES in the Maya Biosphere	Carbon capture	Maya Biosphere Reserve	IDB/Multilateral Investment Fund (MIF)
Honduras	Specific initiatives	Over 20 initiatives involving water-based PES	Micro-basins	Local resources from enterprises and hydroelectricity plants
Salvador	Local water-based PES	Water services at the level of municipalities and municipal associations	At local level and micro-basins	Municipalities, water boards and user boards
Nicaragua	Specific initiatives	Water services and carbon capture	At sub-basin level	Enterprises, municipalities and users
		Support for community forestry	RAAN region	International cooperation (WWF, World Bank and so on)
Costa Rica	National Forestry Financing Fund (FONAFIFO)	PES for water services, carbon capture, scenic beauty and reforestation	National	National hydrocarbon tax, hydroelectricity plants, companies, users and international cooperation
Panama	Project initiatives	Water services for the Panama Canal and other basins	Basins and sub-basins	

Sources: *Sistematización de Experiencias de PSA en América Central EPYPSA 2010.*



## 4.1 Community forestry and forest concessions

As stated in Chapter 2, UN-REDD and FCPF see Mesoamerica as an important area, partly because of the significance of its existing sustainable forms of community forest management, which provide extremely useful experience for REDD+ in the region's countries and other countries with similar conditions. The most important characteristic of such schemes is that they are based on communal ways of managing natural resources. In Mesoamerica, these experiences take place on land designated by the States as forest concessions, as in the exploitation activities in the Maya Biosphere Reserve in Guatemala, the Atlantic region of Honduras or the land belonging to indigenous populations whose ownership rights have been legally recognized (such as the forest communities in Oaxaca, Mexico, RAAN in Nicaragua or the Altiplano in Guatemala).

### *Community forestry in Mexico*

In terms of community forestry, the oldest and most ambitious experiences are probably those in the south-east of Mexico. They arose in the 1980s as a result of a first wave of social struggles as communities protested against the system of concessions awarded to State and parastatal enterprises set up by the Federal Government. At the end of the 1990s, the Mexican Government, through the Secretariat for the Environment and Natural Resources (SEMARNAT) and then through CONAFOR, set up PROCYMAF with their own resources and resources from GEF and the World Bank. The pilot programme began in the state of Oaxaca, and helped to strengthen community forestry initiatives, which were mainly made up of indigenous populations that had set up their own enterprises at the end of the 1980s. Between 1998 and 2010, SEMARNAT and CONAFOR used PROCYMAF to support over 1 000 agricultural units in 14 states, by channelling support for land planning, updating management plans, training local managers and service providers, plus equipment and marketing for wood and non-wood products.

One of the most successful experiences concerns the forest communities in the Sierra Juárez in the north of Oaxaca State, particularly communities who are part of the Zapoteco-Chinanteca Community Union (UZACHI). UZACHI is made up of four communities of the Zapoteco ethnic group (3) and the Chinanteco ethnic group (1). Together, they own an area of 23 125 hectares of forest out of the total 28 978 hectares of territory that belongs to them. The members of the UZACHI communities have considerable experience of mutual cooperation. This is due to the fact that in the 1980s they began a joint struggle for recognition of their rights over the territory and forest resources, which until then had been the subject of a concession to a parastatal paper production company. With the slowdown in this company's activity and the approval of the 1985 Forestry Law, which favours autonomous forest management by agricultural units, the communities in northern Oaxaca organized themselves into a union and not only took over the facilities left by the company but also used their production knowledge to organize their own community enterprises that combine cutting, transport, sawing and, in some cases, drying and carpentry. In the early stages, some NGOs and universities provided technical assistance for the formulation and development of forest management plans and work plans for the enterprises in each UZACHI member community. Those plans were designed in accordance with existing traditional forestry management practices. Their aim is to increase the decimated natural capital left behind by the parastatal company. Land use planning is carried out in the light of the community's needs and family subsistence. This is why, in addition to wood production areas, there are also areas to grow subsistence crops, pasture lands and some areas left wild. Areas given over to productive activities are for wood and non-wood production (e.g. firewood, edible mushrooms, construction materials), water capture areas, protected areas for wildlife and ecotourism zones. Organization and decision making concerning the management of the forest and the enterprises fall to the general assemblies in each community, which make the basic decisions relating to forest management and production. The internal organization includes a commission (six members), a supervisory council and a technical and administrative management team in each enterprise. The ongoing presence of the state and federal government throughout the development of the enterprises has been very important for their success, particularly in terms of training and support for administrative management. Through UZACHI, each community has had access to technical assistance and research services, international cooperation resources and certification of good forest management. Each community now has its own technical forestry service. The small forest community of Santiago Xiacui, with a total of 1 767 hectares of forest in a total surface area of 2 229 hectares, is currently producing 2 000 cubic metres of wood and sales of around 1.2 million pesos a year (which is reinvested into the enterprise and into social services for the community).





The NGO ERA and other civil society actors that have accompanied the creation of UZACHI from the outset have also enabled other communities in the region to capitalize on this experience. UZACHI, along with other forest communities in the state of Oaxaca, are now part of efforts to enhance environmental services, and carbon capture in particular.<sup>49</sup>

The Mexican experience is illustrative because it shows many important factors that contributed to the success of peasant community forest enterprises in communities that are members of UZACHI. Having solid forms of governance within communities and inclusive democratic processes in decision making were crucial for the development of enterprises. Other key elements in the success were the constant support of NGOs, international cooperation resources and government programmes such as PROCYMAF in strategic areas such as land planning, development of their own technical forestry services, efficient and transparent administration of shared resources and the formation of partnerships for applied research, technical assistance and marketing. An integrated approach to land use planning, that included production aspects to create employment as well as self-supply production, enabled the enterprises to respond to crises (as daily subsistence needs were covered). Having basic physical and human capital (facilities from the paper factory and community members familiar with forestry work) meant that communities were not starting off in the wood business from scratch. All of these factors have been fundamental to the success of community forest enterprises in the north of Oaxaca. Having said that, the UZACHI enterprises will soon be facing major challenges in their future development, including the competitiveness of wood from natural forest management compared with products from forest plantations; the administration of forest enterprises; and the considerable migration of the communities' young people whose need for income reduces the job creation capacity of forest enterprises.

### ***Community forest concessions in Guatemala***

In terms of forest communities working on concession lands, the experience of El Petén in Guatemala is probably one of the most successful in the Mesoamerican region, as it successfully combines conservation objectives for the Maya Biosphere region (particularly its multiple use zones) with the recognition of the rights of peasant and indigenous groups to make a living from forestry activities. As mentioned in Chapter 2, community concessions are 25-year contracts between the Government of Guatemala and a community organization that guarantee use, management, extraction and exclusion of wood and non-wood resources in the multiple use zones of the Maya Biosphere region. The concessions range from 3 500 to over 50 000 hectares and involve municipalities for administrative support and conflict resolution.

For concessions to be granted, the groups must form legally recognized organizations before the signing of the concession contract. These organizations are governed by management boards and are made up of mestizo or indigenous population (Mayas-itzaes or people from the Q'eqchi' ethnic group), most originally came from other parts of the country before settling in El Petén over the last 40 years. The concessions come under the communal use regime, so that organization members manage the wood and non-wood resources through systems of rules that are informally or formally established within the groups. Concession land use is established on the basis of a management plan and land planning that considers the aims of conservation, production, subsistence activities of communities and agricultural/livestock activities. Logging activities and their scope are regulated by the contracts. Given the enormous land pressure in the area and illegal incursions, some organizations invest up to USD 15 000 every six months to maintain constant security teams to protect concession land and resources in the forest (CIFOR-FLACSO, 2009).

In terms of strengthening community organization in the context of concessions, second-level organizations have played a very important role. These include the Association of Forest Communities of El Petén (ACOFOP) and the Coordinating Association of Indigenous and Community Agroforestry (ACICAFOP), which brings together organizations from different countries in the region. Both associations have been extremely important in strengthening community organization and the representation of concessions groups as a union, which enables them to participate in political decision-making spheres that go beyond the concessions.

The Guatemalan experience is very different from the Mexican model. It combines the conservation aims that the Government and the international community have assigned to the Maya Biosphere Reserve with the need to integrate the population living in the multiple use zones by involving them in the conservation and forest renewal aims through the sustainable management of the forest in which they live. Unlike Mexican forest communities, concessional tenure systems

<sup>49</sup> The UZACHI and other communities in the state of Oaxaca have formed the NGO Environmental Services of Oaxaca, SAO, AC.



limit ownership rights, types of use, forms of management and the scope of exploitation. The Mexican model provides autonomy with the limits defined by the management plan and sustainability objectives of the activity and the resource. In the Mexican case, organization is strongly based on the traditional governance structures of the indigenous peoples who manage the enterprises and own the land. This gives them a shared vision for resource management and decision making, as well as robust internal management structures. In the Guatemalan model, organizations are formed for the concession contract and are made up of various parties that may or may not have affinities, but that are definitely not based on shared ethnic factors in most cases. In both countries, support from second-level organizations has been fundamental in strengthening organization (and particularly for organizing production and marketing products in Mexico).

## 4.2 Experiences in Payment for Environmental Services

The following analysis is based on national experiences of PES and other forestry incentives developed by Costa Rica, Guatemala and Mexico. Lessons learned are disseminated in the recent studies carried out in the region by EPYPSA, USAID, FAO, REDD-Net and GEF/UNDP (FAO, 2011a; EPYPSA, 2010; USAID, 2011; Kosoy, *et al.*, 2007; Carvajal, 2010; REDD.net, 2011). These various experiences highlight important issues such as institutional arrangements, local governance systems and land tenure.

### PES in Costa Rica

Costa Rica is the only country with a national PES programme based on a tax on fuel consumption supplemented by resources from water use.<sup>50</sup> Money is paid to forest owners by FONAFIFO in recognition of carbon capture, scenic beauty, biodiversity and protection of water resources. Private and parastatal enterprises, involved as environmental service clients, make a financial contribution to supplement the resources that the Government obtains through the tax system. In the period 1997 - 2010, this mechanism financed about 700 000 hectares at around USD 64 per hectare<sup>51</sup> on five-year renewable contracts. Although the initial focus was reforestation, the programme now funds 90 percent of protection practices in the form of fences, firebreaks and area titling. The current beneficiaries are 8 400 landowners, including the ADII.

Owing to the wide acceptance of the programme and the legal status of ADIIs, which recognizes the land ownership of indigenous communities, 20 of the country's 24 indigenous territories are taking part in the PES programme (FCPF-RPP, 2010 Costa Rica). In the four other territories, the lack of forest area and problems relating to legal aspects of the ADIIs have been an obstacle. Out of the 20 territories participating in the PES programme, 11 are in the Bri-Bri-Cabecar territories in the buffer zones of national parks and the Amistad Biosphere Reserve, where the most commonly used arrangement is the PES-Protection. Between 1997 and 2009, this arrangement has been used to transfer approximately USD 15 million to ADIIs (PPD/GEF-UNDP 2010), covering 62 436 hectares (FCPF-RPP, 2010, Costa Rica). However, the resources available for the programme are insufficient to meet the demand.

When the Government began concluding PES contracts with the ADIIs, the former attempted to apply the same rules that were originally established for PES in private properties, namely a maximum quota of 300 hectares per contract. However, the forest areas and number of inhabitants were such that this restriction was considered insufficient, and the quota was initially increased to 600 hectares and subsequently to 1 000 hectares. It was also impossible to carry out the land delimitation needed to register private properties in the national inventory of PES forest areas in the same way in the ADII because of the tenure regime established in the 1977 Indigenous Law. In indigenous communities, the programme has been implemented under two different arrangements, depending on the ways of organizing the territory and forest resources. Under the first arrangement, the programme benefits the community as a whole, because the protected basin or forest area is managed collectively. Under the second arrangement, the benefits are distributed to member families for conserving specific areas managed by them. FONAFIFO has maintained an effective policy by recognizing the specific characteristics of forms of forest management and tenure in indigenous territories and adapting the programme's operational rules to the situation of ADIIs (Carvajal, 2010).

<sup>50</sup> The cost of the mechanism represents 7 percent of the FONAFIFO annual budget, which is funded by fuel taxes and 25 percent tax on users, donations and loans.

<sup>51</sup> The calculation is based on the opportunity costs of potential areas for PES.



## *PES in Mexico*

In Mexico, since 2003, CONAFOR has been implementing a PES programme similar to Costa Rica's called Pro-Árbol (Pro-tree),<sup>52</sup> which offers various compensation arrangements for forest owners who conserve their forests. From 2003 to 2010, Pro-Árbol covered almost 2.5 million hectares and benefited 4 000 estates (including *ejidos*, communities and small landowners) in 27 subnational entities. The programme includes technical assistance services that help in the formulation of management plans and the monitoring thereof. In each state where the programme is implemented, CONAFOR hires promoters to consult with the communities to establish assembly agreements on participation in the programme. According to information from CONAFOR,<sup>53</sup> between 2009 and 2010, 136 agricultural units benefited from PES, covering a surface of 134 122 hectares of forest, managed mainly by indigenous populations. The programme's operating rules include specific arrangements for implementing PES in agricultural units, including the fact that decision making and land ownership should be managed collectively, as well as the recent incorporation of the concept of social safeguards when PES is implemented in indigenous communities.

Although there have not yet been any assessments of the socio-economic and environmental impact of these PES programmes in the indigenous territories of Costa Rica and Mexico, various authors have systematized these experiences and identified the following findings:

- In Costa Rica and Mexico, the forest areas of indigenous communities and territories have usually been managed and conserved in accordance with the management plans set up through PES support.
- In most cases, PES resources have been used to strengthen community works (e.g. schools, roads and bridge repairs) and in some cases to purchase land from non-indigenous estate owners in the Costa Rican ADII territories (REDD-net, 2011; World Bank, 2009).
- The medium-term assessment of Pro-Árbol PES in Mexico,<sup>54</sup> carried out using households from five ethnic groups and a control group, showed that when PES resources reached families, 45 percent was used to buy food and for health spending, 14 percent was used to improve housing, 14 percent to buy farming equipment and 4 percent for savings and contingency funds. In Costa Rica, the assessment study of Small Donations Programme-GEF projects in 2010 mentioned that the income received by indigenous communities has boosted local economies, thereby enabling families to improve their diet and invest in agricultural production or build up emergency reserves to use in the event of crop losses. However, other authors point out the danger of monetarizing these economies, where the symbolic value of natural resources has been an important cultural element in forest protection practices.
- PES support, as with other community forest schemes, has been conducive to the establishment of second-level indigenous and peasant organizations, such as the ADII Caribbean Network in Costa Rica or the UZACHI in Mexico, or has encouraged groups to join such organizations, as with the ACOFOP and ACICAFOC in Guatemala. For indigenous communities, this has been an opportunity to strengthen capacities and organization, and has provided access to new national and international support.
- Nevertheless, few resources appear to have been invested in strengthening local governance schemes through communication, information and training systems. This is the case despite the problems and conflicts recorded that are linked to inhabitants' lack of knowledge about the programme and the limited decision making on the part of leaders (REDD-Net 2011).

## *Forestry incentives in Guatemala*

Another relevant case study is the experience of the forestry incentive programmes of the National Forestry Institute (INAB) in Guatemala: PINFOR and PINEP. PINFOR was set up in 1998 for forest owners (individuals or social groups with

<sup>52</sup> Contracts also last five years and there is PES for water, carbon capture, biodiversity and agroforestry systems.

<sup>53</sup> Database on Pro-Árbol beneficiaries on the CONAFOR website: [www.conafor.gob.mx](http://www.conafor.gob.mx).

<sup>54</sup> Medium-Term Evaluation for social matters carried out in 2009 by consultants hired by CONAFOR, in the framework of the World Bank loan for PES. The sample of households interviewed was 333.



legal personality) whose plots were recorded in the National Property Registers. PINPEP was piloted in 2007<sup>55</sup> for small landowners (without property titles). The supported initiatives relate to reforestation and maintenance of land suitable for forestry, as well as management of natural forests. By 2010, PINFOR had supported more than 712 000 beneficiaries in conserving around 188 500 hectares and reforesting over 102 000 hectares (INAB, 2012).<sup>56</sup> By 2010, PINPEP had supported 5 156 initiatives, including 32 000 hectares earmarked for protection or productive management of natural forests, and 7 000 hectares for plantations and agroforestry systems.<sup>57</sup>

On their own initiative and with the support of resources from both programmes, Guatemala's indigenous and peasant forest communities have been creating second-level organizations in the country's various forest regions. In 2009, these then formed a third-level body known as the National Alliance of Community Forest Organizations. This organization aims to support the strengthening of forest incentive programmes and contribute to preparations for implementing REDD+ in the country.

Although PINPEP generated considerable expectations among indigenous and peasant communities whose land tenure was not fully regularized, the development of PINPEP has been hampered by legal problems in terms of its implementation and financial restrictions. While the PINPEP Law did define owners whose estates were not registered under their name in the Property Register as possible beneficiaries, the Law's regulations state that the incentive will only apply to estates with no entry in the Register. This confusion between the subject (owner) and the object (estate) makes it impossible to apply the programme in almost all communal lands, as very few areas are in estates with no entry in the country's General Property Register (most are in lands registered to municipalities). In addition, the only way the INAB can identify with certainty those plots or communities in unregistered lands would be by working closely with the Land Registry, which is currently carrying out land surveys of estates in 41 municipalities. However, coordination between forest promotion agencies and land administration bodies is still in its infancy.

This experience shows the fundamental importance of institutional coordination and of the ongoing review of the legal frameworks that govern such programmes in the light of the experience of implementation. This review should also consider the close links between the legal frameworks that govern PES programmes and other forestry incentives, and those that regulate tenure of land and natural resources.

In 2009, FAO assessed compensation mechanisms relating to forests and water in 27 cases from Central American and Caribbean countries. According to the analysis, the emergence and staying power of initiatives using such mechanisms depend on many factors, including:

- effective local participation in the design and operation of the mechanism, and an ongoing willingness to pay;
- monitoring and organizational structures that facilitate effective coordination of the interests of beneficiaries and potential providers of environmental services;
- appropriate external support in terms of finance and assistance was fundamental, especially in the initial phases of development of compensation mechanisms;
- secure land tenure, especially for initiatives with vast territories, has been a determining factor in ensuring the continuity over time of forest and water compensation initiatives;

and

- legal frameworks, conducive public policies and political will are essential in promoting the success of this type of initiatives (FAO, 2009d).

<sup>55</sup> The PINPEP Law and its regulations were approved until 2010.

<sup>56</sup> INAB website: <http://200.30.150.38/Paginas%20web/Pinfor.aspx>.

<sup>57</sup> Unlike PINFOR, PINPEP offers incentives for the establishment of agro-forestry systems.



### 4.3 Governance in indigenous territories

In May 2012, by a large majority, member countries of FAO adopted the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. By adopting them, the international community was confirming the importance of good governance in the tenure of resources as the basis for sustainable management thereof. For FAO, natural resource governance means the rules, processes and structures used to take decisions on access and use of resources, the way in which those decisions are implemented and strengthened and the ways in which divergent interests are managed (FAO, 2009b). At the basis of good governance are legitimacy, confidence and transparency. As shown in the analysis of PES and community forestry experiences, good governance in the indigenous groups living in forest territories is a fundamental factor in achieving conservation and sustainable management of forests.

The situation in terms of internal governance of Mesoamerican indigenous groups is currently uneven, regarding the analysis of their legitimacy, confidence and transparency. Some communities are suffering from the effects of migration; conflicts over access to natural resources and territory; illegal felling; drug trafficking; or the lack of transparency in decisions taken by local authorities or the leaders of internal economic organizations. Some groups in the RAAN region in Nicaragua, which have developed interesting community forestry experiences, suffer from situations where a few leaders taking over the decision-making power, which leads to extreme inequalities in the access, use and management of community resources. An assessment of those experiences reported that power was concentrated among a few local authorities. This leads to centralized and non-transparent management of financial resources and natural resources, thereby limiting community participation in decision making and in the allocation of the benefits of activities (Nitlapán, 2007). The same assessment also reported irregularities in the allocations carried out by some local government authorities, who extended wood extraction permits and the sale of lands to migrant peasants within indigenous territories in a non-transparent way (Nitlapán, 2007).

The Mexican experiences described earlier are examples of good governance in indigenous communities, but there are other relevant examples in larger forest territories, such as the Kuna and Emberá communities in Panama. In the case of the Kuna groups mentioned in Chapter 2, governance structures are run by a cluster of families led by a *Sahila* (chief). The representatives from clusters of family communities form Local Congresses, these form General Congresses and their representatives take part in the National Congress. The democratic elections of representatives and the rotating participation of community members in commissions responsible for territorial management and administration mean that members are participants in the governance processes, and create legitimacy and confidence in the governing bodies. This is demonstrated in the robust institutions, and results in efficient management and autonomous administration of their territories. One example of this can be seen in the Kuna-Yala territory in southern Panama.

Another interesting illustration is the experience of the Emberá-Wounaan groups living in the *comarca* set up in 1983 in the Darién region of Panama. With a governance structure similar to the Kuna, in 2009 the groups of the Emberá-Wounaan *comarca* set up an enterprise to promote and enhance their territory by selling various types of local products and ecotourism services. This *comarca*, which considers its territory as a natural and cultural heritage to be conserved and valued, therefore works on the sustainable management of forest resources by processing and selling wood. One of the enterprise's key values is the way in which profits are reinvested for the benefit of the community. Dividends are used to fund operational expenses and administration costs of the *comarca* and the enterprise, to promote community development and to strengthen the sustainability and economic autonomy of the territory. Resources are also used to develop vocational training programmes for community members, and lastly are reinvested in the enterprise's activities to generate jobs for community members. As with the Kuna, the development experience of the Emberá-Wounaan enterprise is based on robust institutions and forms of internal governance.



## 4.4 Lessons

According to the analysis of these initiatives, and the work of other authors (Merino, 2004), any consideration of the work that REDD+ could carry out in the Mesoamerican region should include various factors that affect how forests are used, preserved or deteriorate:

- Sustainable use and conservation of common forest resources has significantly reduced poverty. Forestry income has a positive effect on the living conditions of families, and in some cases has enabled the development of community services. Economic incentives for forestry activities and the services they generate encourage the commitment of these communities to the regulation and sustainable use of their forests.
- Determining factors for poverty include the lack of investment and/or permanent funding mechanisms, production options and income sources, as well as a lack of viable infrastructure and training programmes. By limiting the possibilities for investment in sustainable management, poverty in turn often leads to a deterioration in natural resources.
- Agrarian conditions are a fundamental factor in community institutions. The social nature of land tenure gives communities the right to design many of the operational rules for the use of their jointly owned resources. However, the coordination task tends to be arduous and conflictual in cases where territories are made up of several different areas. The presence of diverse population centres with their own decision-making mechanisms in a single territory is often a recipe for differences and inequalities in access to common resources and the capacity to make decision on their use and the allocation of benefits.
- Among the factors of community institutions, the delimitation of resource system boundaries is a crucial factor in institutional performance. When boundaries are undefined or insufficiently defined (as in communities in protected areas), the other conditions that characterize good institutional performance tend to be weakened or absent.
- Ethnic belonging can be conducive to the conditions that encourage development of and agreement on rules to manage common resources. These conditions may include a shared vision of resources and relations of trust and reciprocity, which are an important part of social capital when it comes to resource conservation. However, these factors are not exclusive to indigenous communities and do not apply to all of them, as communities that have lived and struggled together for many years (as in the Mexican community forestry experience) often have a shared vision and a trust despite the absence of ethnic bonds.
- Forestry closed seasons imposed on communities, persistent illegal incursions and different perceptions and interests among inhabitants have been more significant factors in the lack of regulation than the values of confidence and reciprocity maintained among some sectors of the community.
- Regular monitoring and incremental sanctions for rule breakers are vital for compliance and for the conservation of common resources. Similarly, having incremental sanctions defined by the assemblies themselves is a crucial factor in ensuring compliance with the rules.



## CHAPTER 5

# Opportunities and limitations for REDD+ processes in the indigenous forest territories of Mesoamerica

As shown in the analysis contained in this study, the Mesoamerican region is an area of great potential interest for UN-REDD, FCPF and other agencies in the development of REDD+. This is not only because of its significant forest mass, but also because of the relevant experiences that have been gained in developing incentives for good forestry management; the progress over the past 20 years in terms of recognizing the ownership and use rights of forest populations over land and natural resources; and lastly the institutions and governance infrastructure that can form a considerable support base when it comes to implementing REDD+ processes.

In this regard, what does this document's analysis reveal about the potential opportunities and limitations of developing REDD+ processes in Mesoamerican indigenous territories? As mentioned in Chapter 1, REDD+ includes many aspects that must be guaranteed for its implementation, including: minimum scale of forest territory to receive compensation; permanent nature of the effects so that territorial land owners have secure and legally recognized rights of tenure to ensure CO<sub>2</sub> capture processes through the forest; implementation of social and environmental safeguard mechanisms that require basic legal frameworks and participation and consultation processes; the application of MRV mechanisms; and the additionality of ensuring that compensation will generate an extra income compared with the incentive-free situation.

Although the situation is somewhat uneven, these requirements can generally be more or less satisfied by countries in the Mesoamerican region. In terms of scale, as stated in Chapter 2, the region's countries have vast territories of forest mass where any REDD+ incentive mechanisms could be applied. Traditionally, these territories belong to indigenous groups that use ancestral sustainable forest management that can be hugely valuable. In terms of the legal recognition of these populations' rights over the land and natural resources that would guarantee the scale and long-lasting effects, progress has been ongoing for the past 15 to 20 years. In the Atlantic areas, there have been relevant processes to recognize rights and define territories since the beginning of this century in Nicaragua. Such processes are just beginning in Honduras, and in terms of the recognition of the existing collective and communal rights in forest lands in southern Mexico and indigenous reserve lands in Costa Rica and Panama. Most Central American countries (see annex 4) have delimitation projects, including land administration, land registry and property record services, that involve actions in indigenous lands carried out by national governments in conjunction with international agencies such as the World Bank, the IDB, FAO, Deutsche Gesellschaft fuer Internationale Zusammenarbeit (GIZ), the Norwegian Government and so on.

Having said that, developing the REDD+ initiative can involve certain risks and limitations. Some of these have been expressed by indigenous movements, who have concerns about the effects that this mechanism could have on their land, including the following:

- There is the risk of halting current processes to transfer or strengthen the tenure rights of indigenous peoples, due to the possible interest of governments in maintaining formal ownership of lands involved in REDD+ initiatives, and therefore ownership of any eventual income from carbon sales.
- Given the possible interest of central or local governments in controlling financial incentives, there is the risk that the legal consolidation processes for indigenous territorial rights might be hampered, if the authorities want the territories to remain public land. In the context of possible REDD+ actions, this would potentially increase the number of forest concessions to private carbon capture enterprises in indigenous lands, and would expand the scale of protected natural areas within those territories.
- Indigenous peoples also point to the risk that the commercialization of environmental services may weaken community organization and ancestral practices for the collective management of natural resources, thereby increasing the number of conflicts over boundaries and access to resources.



The risks described by indigenous population will have to be carefully considered by governments in Mesoamerican countries and organizations taking part in developing REDD+ mechanisms in indigenous territories. The goal would be to streamline, rather than hamper, processes to recognize the rights and define the boundaries relating to these territories. In this sense, it is vital for the formulation of the REDD+ incentive models and programmes to closely involve the populations who live in the territories concerned, so as to avoid any risk of harm.

Institutional aspects are another potential limitation that must be considered as part of REDD+ processes in terms of secure tenure and recognition of indigenous rights over land and natural resources. As mentioned in Chapters 2 and 3, the institutions responsible for the tenure of indigenous lands are managed by agrarian reform institutes (that come under ministries of agriculture), land registry and property records agencies, and lastly by environment and forestry ministries (in terms of protected areas). Inter-institutional work on aspects relating to indigenous lands in Mesoamerican countries suffers from overlapping functions, inefficiency, excessively bureaucratic processes and a lack of coordination. The fact that each agency comes under a different government ministry makes the work even more difficult. In addition, in terms of indigenous lands, the transformation of the region's land administration sector has given a dominant role to institutions such as the Land Registry or Property Registers, which do not always have enough capacity or experience to provide a comprehensive response when dealing with aspects of territorial and traditional organization, regularization of tenure over land and natural resources and conflict resolution. As a possible counterpart for REDD+, these institutions should be more involved in the processes to prepare this initiative and should work closely with institutions that have more experience in such areas. It therefore follows that, with the support of UN-REDD, governments should support the development of smooth and efficient inter-institutional coordination processes with an integrated and participatory approach when working with the territories of indigenous populations.

In terms of implementing social and environmental safeguard mechanisms requiring the amendment of existing legal frameworks and participation and consultation processes, this document has shown that there have been major national and international advances in terms of rights recognition and secure tenure over land and resources in indigenous territories in the Mesoamerican region. Annex 2 describes the specific development and current situation of legislation in each Mesoamerican country, in terms of land and natural resource management. Generally speaking, the current situation and the development of such legislation are heading in the right direction, mainly because there is ongoing political will to close the legal loopholes and resolve the contradictions in some frameworks, including the unfinished implementation of processes to recognize rights and define indigenous territories.

In terms of what remains to be done, it will be vital to amend existing legal frameworks to clarify ownership of environmental and carbon capture services, and to strengthen the security of tenure over land and natural resources in indigenous territories. Another important aspect to be considered is the need to work on simplifying the rules and regulations of some laws, particularly environmental and forestry legislation, as they have generated considerable barriers to accessing support programmes or usage permits in indigenous territories, thereby weakening the implementation of the Convention on Biological Diversity, particularly Article 8(J) on the benefits of traditional knowledge (mentioned in Chapter 3).

As for participation and consultation processes, as shown in Chapter 3, many of the region's countries are drafting guidelines on FPIC, not only because of the forthcoming roll-out of REDD+ processes, but also in response to national and international movements that have described the need to include FPIC as a requirement for preparing and implementing investment programmes that have an impact on forest territories and other spheres. To respond to the need for FPIC in REDD+ processes, and above all to tackle the risks identified by indigenous organizations in terms of the possible effects of REDD+ on their territories, UN-REDD and FCPF are jointly proposing changes to the approaches to be used in Latin America. This is why aspects of sustainable management, rather than just conservation, have been included. Furthermore, operational guides and safeguards that include the principle of FPIC are being produced for the participation of indigenous peoples,<sup>58</sup> as well as capacity-building programmes for indigenous peoples who depend on the forests.<sup>59</sup> In addition, the nested approach of REDD+ seeks to facilitate the inclusion of subnational initiatives, so that countries can launch programmes with a local and less centralized approach that can subsequently become a national focus; or for the simultaneous recording and receipt of credit at the subnational and national levels (CIFOR, 2009).

<sup>58</sup> <http://www.forestcarbonpartnership.org/fcp/node/321>.

<sup>59</sup> See information in <http://www.forestcarbonpartnership.org/fcp/node/248>.





Lastly, the efforts of various international agencies to decide on a common approach to social and environmental safeguards should be mentioned, without ignoring the need to adapt processes to national legal and institutional frameworks. All of these initiatives definitely form a solid base for strengthening trust among the various actors involved in preparing and implementing REDD+.

In terms of the need to guarantee additionality, namely ensuring that compensation will generate an additional impact compared with the incentive-free situation, indigenous movements are afraid that the need for such guarantee will mean that the conservation of forest resources and ecosystems based on traditional management and the worldview of resident indigenous peoples will be overlooked. They claim that landowners that make efforts to recover natural resources that they have previously destroyed may benefit more than indigenous territories that are subject to great pressure in terms of demand for land. Population increase (indigenous and migrant) in territories, spontaneous colonization processes and the illegal exploitation of resources threaten the sustainability of traditional indigenous management of forests and ecosystems. In this sense, the additionality requirement will have to be interpreted in the light of a current analysis of territories and their prospects, so as to assess future trends of occupation and resource conservation in the short and medium term. Above all, however, the additionality requirement should prioritize the importance of maintaining over time the ecosystem services and conservation efforts that indigenous peoples are currently implementing in their territories.

As far as the multi-purpose nature of REDD+ incentives are concerned, reducing the poverty suffered by most of the region's indigenous territories and communities should definitely be considered a priority. It would be unwise to think that this aim could be fully achieved through forest conservation subsidies alone. This is why the UN-REDD Programme, FCPF and other agencies involved in REDD+ preparation should work alongside national governments to encourage the development of initiatives conducive to a sustainable use of wood and non-wood forest resources on the territories, as well as for food production and job creation, particularly for women and young people, who usually have limited access to forest incentives.

In terms of PES programmes and other forestry incentives implemented in the region, they appear to have had a mainly positive effect in indigenous territories, which explains why there is an increasing demand for such initiatives on the part of communities in Costa Rica, Guatemala and Mexico. The experience of these programmes, and their various preparation and implementation arrangements, is a rich source of learning and should be used as a reference for processes linked to REDD+, not only in the Mesoamerican region but in Latin America in general (especially for territories where the land is worked collectively or communally).



# Conclusions

In conclusion, bearing in mind the contents of this document, it is necessary to list some of the key recommendations for the preparation and implementation of REDD+ and other incentive programmes in forest and indigenous territories of the Mesoamerican region.

**Strengthening trust between governments and indigenous peoples appears to be an urgent task** in the region. It is vital to recognize the specific characteristics of territories and communities, not only in terms of their cultural and organizational aspects, but also the features of their ecosystems and tenure systems. Countries such as Costa Rica and Mexico have successfully implemented PES and other forestry incentives with indigenous population groups because they recognized the need to establish different procedures and rules from those operating in other forest territories, in the light of significant differences among territories in terms of territorial management and organization.

An effective option for the preparation and future implementation of REDD+ in the region is perhaps **the nested approach of REDD+**, whereby governments can use other existing programmes as a model or basis, including existing PES or other forestry incentive programmes. In addition, second- and third-level organizations that have been set up to accompany the implementation of such programmes in Costa Rica, Guatemala, Honduras and Mexico, could become significant partners in negotiating the larger areas required for REDD+.

Another necessary aspect of increasing trust would be to **remove the barriers to commercial forestry exploitation in indigenous territories and communities**, such as those that still exist in Costa Rica, Nicaragua and to some extent in the protected areas of other countries in the region. Although the plus sign is now included in the REDD+ initiative to recognize sustainable ways of managing natural resources, aspects such as national forestry closed seasons special decrees or restrictions in management plans reinforce the feeling that REDD+ could represent a new threat to community forestry, which has been an important element of the sustainable management of natural resources in forests and indigenous territories.

It is important to **establish closer links between current investments to prepare for REDD+ with initiatives under way to strengthen the legal certainty of indigenous territories**. Considering that most of these countries have investment for the next six years (see annex 4), the RRP and other REDD+ preparation and implementation plans could usefully include more specific targets in terms of regularizing indigenous tenure. Another idea would be to include indigenous professionals familiar with territorial issues in the coordination units for the tenure regularization programmes under way,<sup>60</sup> as they could facilitate links with REDD+ processes and support coordination between the relevant bodies.

**The Strengthening of public and civil society bodies for conflict resolution** should be a priority in the preparation work of REDD+ and for the titling or tenure regularization initiatives in indigenous territories. The current weakening of such bodies is undoubtedly a threat to tenure regularization processes and to the implementation of programmes to manage and conserve natural resources. In this sense, sharing experiences at the Latin American level and more widely through South-South initiatives could be important in developing organizational and human capacities for conflict resolution.

**Efforts to implement FPIC with indigenous peoples** will not be entirely successful if they are not accompanied by measures needed to strengthen trust in and legitimacy of government actions within indigenous territories. Given that the conditions are right to establish a dialogue, prior to consultation it will probably be necessary to agree on a detailed training, information transfer and FPIC implementation plan for each territory concerned. The design of dialogue processes in the implementation plan must consider the needs for representation and legitimacy of the actors involved and the expected outcomes of the consultation. The design of consultation processes for REDD+ in the region could use the consultation under way for the land titling and regularization programmes in Guatemala, Honduras and Nicaragua as a valuable reference, in terms of its successes and any lessons learned.

<sup>60</sup> This aspect has been considered in the PROCYMAF project in Mexico, and particularly the implementation unit for the programme in the state of Oaxaca.



Lastly, the experiences of PES and regularization and tenure over land and natural resources have also shown **the need to strengthen governance** within territories. Particular emphasis should be placed on communication processes for the entire population; the development of internal statutes or regulations to support local self-regulation practices for territorial management; and organizing land planning in a participatory way. All of the above can become useful instruments for strengthening good governance practices over land and natural resources.



## ANNEX 1

# Central American countries and their REDD+ preparation phase

	Scheme (1)	National plans	Financial support	Related initiatives	Indigenous component
Costa Rica	FCPF UN- REDD (OM)	R-Pin (2008) R-PP (2010)	FCPF World Bank GIZ TBD Teneska power Other	<ul style="list-style-type: none"> <li>• National preparation initiative</li> <li>• Payment for Environmental Services</li> <li>• Strengthening of Protected Areas</li> <li>• Land use policies</li> <li>• Purchase and incorporation of private land in Protected Areas</li> </ul>	Indigenous territories on the Pacific and Atlantic coasts Participation of Association for Integral Indigenous Development (ADII)
Guatemala	FCPF UN-REDD (OM)	R-Pin (2008) R-PP def. (2012)	FCPF/IDB World Bank IDB USAID Gibor, Baren	<ul style="list-style-type: none"> <li>• National preparation initiative with MRV</li> <li>• National strategy to reduce deforestation, including forestry incentives PINFOR and PINPEP</li> <li>• Sustainable forest management (including community forestry)</li> <li>• Forestry management plan</li> <li>• Institutional transparency</li> </ul>	Prioritization of certain key territories in forest management. Current stakeholders: <ul style="list-style-type: none"> <li>• Guatemala's Indigenous round table on climate change (MICCG)</li> <li>• National Alliance of Community Forestry Organizations</li> <li>• Network of Indigenous Authorities (under way)</li> </ul>
Honduras	FCPF UN-REDD (OM)	R-Pin (2008)	FCPF World Bank	<ul style="list-style-type: none"> <li>• Consultations</li> <li>• Strengthening of regulatory framework</li> <li>• Forest certification</li> <li>• Sustainable Forest Management</li> </ul>	<ul style="list-style-type: none"> <li>• REDD+ preparation activities stopped in 2008 and there is no clear information on possible impact of REDD+ in indigenous territories</li> <li>• Indigenous peoples took part in consultations for R-PIN in 2008: Federation of Xicaque Tribes of Yoro (FETRIXY), Association for the Development of Honduran Mosquitia (MOPAWI), Coordinating Association of Indigenous and Community Agroforestry, Honduran Black Fraternity Organization (OFRANEH), Honduran Lenca Indigenous Federation (FHONDIL), National Federation of Rural Workers (CNTC) and the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH)</li> </ul>
Mexico	World Bank FCPF UN-REDD (OM)	R-Pin (2008) R-PP (2010) R-PP (2011) revised	World Bank Government of Norway	<ul style="list-style-type: none"> <li>• National preparation initiative with MRV</li> <li>• Project in preparation for Forestry Investment Programme (FIP) to strengthen early REDD-type actions and subnational projects</li> <li>• Subnational initiatives in the state of Chiapas (agroforestry, reforestation, carbon capture)</li> </ul>	<ul style="list-style-type: none"> <li>• Several indigenous communities and <i>ejidos</i> in forest areas currently benefit from the CONAFOR PES programme, as well as receiving support from community forestry programmes</li> <li>• Representatives from indigenous communities are on the Technical Advisory Committee for REDD+ and CONAFOR is proposing to set up local technical advisory committees with the National Commission for Indigenous Peoples</li> </ul>

	Scheme (1)	National plans	Financial support	Related initiatives	Indigenous component
Nicaragua	FCPF	R-Pin (2008) Draft R-PP (2011)		Strengthening of forest governance Modernization of forest management system	<ul style="list-style-type: none"> <li>Nicaragua has made efforts in the demarcation and titling of indigenous territories in the RAAS and RAAN regions.</li> <li>Governments from the two autonomous indigenous regions have taken part in consultations and have been but forward to be part of the decision-making system.</li> <li>The RAAS and RAAN regions will probably be made a priority for REDD+</li> <li>Training planned for indigenous communities</li> </ul>
Panama	FCPF UN-REDD (MF)	R-Pin (2008) R-PP (2009) Draft NPD (2010)	ONU-REDD BM	<ul style="list-style-type: none"> <li>National preparation initiative with a unified framework for results among FCPF, UN agencies and Government of Panama</li> <li>System of indigenous participation</li> <li>Forest plantations</li> <li>Forest conservation</li> </ul>	<ul style="list-style-type: none"> <li>The REDD+ project will probably have a strong impact on indigenous territories and <i>comarcas</i>.</li> <li>The National Environment Authority (ANAM) has held several meetings with indigenous peoples.</li> <li>National Coordination for the Indigenous Peoples of Panama (COONAPIP) has been invited to be part of the National Group for REDD+</li> <li>Institutional strengthening of COONAPIP is part of the REDD+ preparation plan</li> </ul>
El Salvador	FCPF	R-Pin (2008)	World Bank	<ul style="list-style-type: none"> <li>National preparation initiative</li> <li>Law on Forestry and Climate Change</li> <li>Institutional strengthening</li> <li>Agro-forestry and coffee production</li> </ul>	<ul style="list-style-type: none"> <li>The preparation plan is still at the general stage.</li> <li>There are not considered to be any relevant indigenous groups in the country.</li> </ul>

(1): DR countries are members of UN-REDD and are known as Countries Receiving Support for National Programmes. OM refers to Other Partner Countries that are members of UN-REDD but that do not receive its resources to prepare National Programmes.

Source: [www.forestcarbonpartnership.org](http://www.forestcarbonpartnership.org) and [http://www.un-redd.org/Partner\\_Countries/tabid/102663/Default.aspx](http://www.un-redd.org/Partner_Countries/tabid/102663/Default.aspx), reviewed in July 2012 and CIFOR, 2009, Emerging REDD+.



## ANNEX 2

# Legal Reforms on Land and Management of Natural Resources in Mesoamerican countries

## Mexico

Legal land reforms		Legal reforms on titling of indigenous lands		Legal reforms on management of natural resources in indigenous communities
Laws	Institutional change	Titling laws	Programmes/ Initiatives	Natural resource management laws
<p><b>1917:</b> Constitution and Agrarian Reform Laws</p> <p><b>1992:</b> Agrarian Law reform</p>	<p>From 1917 to 1970, Mexico promoted a significant distribution of land through <i>ejidos</i> (State lands granted as concessions to small producer communities) and the restitution of land to indigenous communities. Indigenous communities and <i>ejidos</i> form part of the Agricultural Units that currently make up 50% of the Mexican territory. The agricultural unit lands are non-transferable, inalienable and have their own legal personality.</p> <p>PROCEDE (Programme for the Certification of Ejidal Rights and Titling of Urban Plots) was created. This was to strengthen the delimitation of <i>ejidos</i> and communities and the certification of plot rights (only for <i>ejidos</i>) to fortify the collective and individual certainty of ownership. In <i>ejidos</i>, it is now possible to hire and possibly sell plots to third parties, with the agreement of the <i>ejido</i> assembly.</p>	<p><b>1917:</b> Article 2 of the <b>Political Constitution of Mexico</b> recognizes the right of indigenous peoples to the self-determination of their rights, which includes governing themselves using their own rules and traditions. This article also guarantees the land rights of indigenous communities.</p> <p><b>1975:</b> Ratification of the <b>International Convention on the Elimination of All Forms of Racial Discrimination</b><sup>a</sup></p> <p><b>1990:</b> Ratification of the <b>ILO Convention 169 on the strengthening of territorial rights.</b></p> <p><b>1992: Article 27 of the Constitution</b> was reformed. State distribution of land was suspended and ownership of <i>ejidos</i> and communities transferred to those legally occupying the land. Article 4 recognizes the multicultural composition of the country's indigenous population.</p> <p><b>1996:</b> The San Andrés Accords proposed the Indigenous Rights and Culture Law in 2001, but this was amended mainly in terms of autonomy, responsibility and rights of indigenous peoples. The Law characterizes indigenous peoples as public interest entities, rather than legal entities, and does not include a definition of important concepts such as territories, habitat and lands.</p>	<p>Indigenous peoples recovered some of their territories through Agrarian Reform. Peoples that had property titles awarded by the Spanish Crown successfully set themselves up as Indigenous Communities, while other adopted the <i>ejido</i> option. In all cases, titling for indigenous communities and <i>ejidos</i> (State land) is carried out in the community sphere and not the territorial sphere.</p> <p><b>1936:</b> A specific institution was set up for indigenous communities: the National Indigenous Institute, which operated until 2000.</p> <p><b>1992:</b> PROCEDE was less accepted by indigenous communities, as they feared that the certification of plots in their midst would weaken the sense of collective territorial management. Communities that accepted it simply certified their external boundaries.</p> <p><b>2004:</b> The production means and land access programme was created to facilitate the handover to new generations in indigenous communities and <i>ejidos</i> through the Young Rural Entrepreneur and Land Fund (FTJER), financed by the Secretariat for Agrarian Reform and the World Bank.</p>	<p><b>1988:</b> The General Law on Ecological Balance and Environmental Protection (LGEEPA), created in 1988 and reformed in 2012, gives communities (including indigenous ones) the right of protection, preservation, use and sustainable exploitation of natural resources, and the safeguarding and use of biodiversity.</p> <p>This Law also regulates protected natural areas that are often set up in agricultural units. Protected natural areas come under the National Council for Protected Areas (CONANP) and are administered through management programmes. However, ownership is retained by <i>ejidos</i> and/or communities that are involved in territorial management through the Technical Advisory Committee.</p> <p><b>1992:</b> The Agrarian Law allows forest lands to be managed under a communal use system. Most of these lands belong to communities and <i>ejidos</i>. This Law also prohibits their subdivision.</p> <p><b>1993:</b> Ratification of the Convention of Biological Diversity.</p> <p><b>1996:</b> The LGEEPA Law was reformed, The National System of Protected Areas (SINAP) was strengthened and the participation of indigenous communities, social groups, <i>ejido</i> members and physical and moral persons were allowed to take part in territorial management through the Technical Advisory Committee. The concept of co-management does not exist as such.</p> <p><b>2000:</b> The National Forestry Commission was created and a national Payment for Environmental Services programme is launched that remains in force today and that is laying the foundations for REDD+ implementation.</p> <p><b>2000 and 2003:</b> The General Wildlife Law (2000) and the General Law on Sustainable Forestry Development (2003) recognized carbon capture as an environmental service.</p> <p><b>2012:</b> Reform and addition of several provisions to the General Law on Ecological Balance and Environmental Protection, General Wildlife Law (2000) and the General Law on Sustainable Forestry Development concerning management and relevance of environmental services. The main points include the establishment by the Wildlife Law of the right of forest landowners to receive economic benefits resulting from environmental services and maintenance, and the inclusion of safeguards recognized in international law including free, prior and informed consent (FPIC).</p>

<sup>a</sup>This Convention gives ownership rights to indigenous communities.

## Guatemala

Legal land reforms		Legal reforms on titling of indigenous lands		Legal reforms on management of natural resources in indigenous communities
Laws	Institutional change	Titling laws	Programmes/Initiatives	Natural resource management laws
<p><b>1952:</b> Agrarian Reform</p> <p><b>1954:</b> Development of a State programme of land distribution</p> <p><b>1996:</b> Peace Accords (policy)</p> <p><b>1999:</b> Land Fund Law</p> <p><b>2002:</b> Government Agreement No. 136-2002</p> <p><b>2005:</b> Land Registry (RIC) Law by means of Decree No. 41- 2005</p>	<p>Substantial reform attempted but abandoned in 1954. Owing to the short reform period, 20% of farmable land was distributed, and this benefited 24% of the population. As a result of the 1954 coup d'état, all reform beneficiaries were again expelled from their plots.<sup>b</sup></p> <p>Marginal reform in the context of the Alliance for Progress programme.</p> <p><b>1996:</b> Creation of the Land Fund (FONTIERRA) to allocate, sell and title individual and collective land, and the Sub-Secretariat for the Resolution of Land Conflicts (CONTIERRA).</p> <p>This Law seeks to make the Peace Accords operational in relation to land (its three parts address the issue of indigenous peoples' lands).</p> <p>Creation of the Secretariat for Agrarian Affairs (SAA), which subsumes CONTIERRA.</p> <p>Creates the <b>Land Registry (RIC)</b> to strengthen the legal certainty of land tenure by regulating land registry processes and updating land registry information. The Property Register simply grants the restitution of land seized under previous regimes</p>	<p><b>1983:</b> Ratification of the <b>International Convention on the Elimination of All Forms of Racial Discrimination.</b></p> <p><b>1985:</b> The <b>National Constitution</b> recognizes the rights of indigenous communities, also stipulating that the State will use special programmes and appropriate legislation to provide State lands to indigenous communities that may need them for their development.</p> <p>To date, however, Communal Lands have been more frequently registered as cooperatives, producer associations or Community Agricultural Enterprise.</p> <p><b>June 1996:</b> Ratification of ILO Convention 169 but with limitations, as this ratification does not apply retroactively.</p> <p><b>2009:</b> The Regulations for the Land Registry Law established the procedure for the Declaration of Communal Land, which aims to promote recognition of communal lands and prevent the Land Registry from breaking up collective-use lands.</p>	<p>From 1999 to 2005 the Land Fund (FONTIERRA) provided 71,500 hectares to 15,500 individual and collective beneficiaries.</p> <p><b>2010:</b> The Land Administration Project (<b>PATH II</b>)<sup>c</sup> and the Land Registry began the process of recognizing lands that meet the requirements for submitting formal applications for communal land certification.</p>	<p><b>1989:</b> The Law on Protected Areas created the Guatemalan System of Protected Areas (SIGAP) and the National Council for Protected Areas (CONAP) as the most senior management and coordination body for SIGAP. Forest and flora and fauna usage was granted through permits awarded by CONAP.</p> <p><b>1990:</b> Creation of the Maya Biosphere Reserve.</p> <p><b>1994:</b> Approval of the Rules on the Allocation of Forestry Concessions that enable communities and/or groups of producers to commercially exploit forests within Protected Areas of the Department of El Petén.</p> <p><b>1995:</b> Ratification of Convention on Biological Diversity.</p> <p><b>1996:</b> The Forestry Law establishes that any type of forest exploitation must be awarded by concession (State or communal lands) or by license (private property).</p> <p><b>1999:</b> The Law on the Forestry Incentives Programme for small forest landowners (PINFOR) facilitated development of a subsidy payment programme for forest owners who set up conservation or sustainable management schemes.</p> <p><b>2011:</b> The 2011 Law on the Forest Incentives Programme for Small Forest and Agroforestry Landholders (PINPEP) is similar to PINFOR but is for families and communities that are not formal owners, but whose status as possessor is recognized. There are difficulties in operating this programme due to differing legal interpretations of the status of possessors.</p>

<sup>b</sup> AARC information leaflet, Judith Seemann, January 2003, Publisher: FIAN Internacional (<http://www.fian.org/recursos/publicaciones/documentos/tierra-y-paz-en-guatemala/pdf>).

<sup>c</sup> PATH is an adaptable loan project funded by the World Bank and implemented by the Land Registry. The aim is to foster the process of achieving secure land tenure in nine Departments (Alta Verapaz, Baja Verapaz, Chiquimula, Escuintla, Izabal, Sacatepequez and Zacapa) and the municipality of Palachum in the Department of Quiché, by providing efficient and accessible land administration and land registry services. For more information, see: <http://web.worldbank.org/external/projects/main?Projectid=P087106&theSitePK=500797&piPK=64290415&pagePK=64283627&menuPK=64282134&Type=Overview>.



## Honduras

Legal land reforms		Legal reforms on titling of indigenous lands		Legal reforms on management of natural resources in indigenous communities
Laws	Institutional change	Titling laws	Programmes/Initiatives	Natural resource management laws
<p><b>1961:</b> Decree Law No. 69</p> <p><b>1962:</b> Agrarian Reform Law</p> <p><b>1974:</b> Law of the Honduran Forestry Development Corporation</p> <p><b>1975:</b> Decree 170 of the new Agrarian Reform Law</p> <p><b>1982:</b> Political Constitution of the Republic of Honduras</p> <p><b>1992:</b> Approval of the Law on the Modernization and Development of the Agricultural Sector (LMDSA)</p> <p><b>2001:</b> Executive Agreement No. 035-2001</p> <p><b>2004:</b> Approval of Property Law (Decree No. 82-2004) by the National Congress</p>	<p>Creation of the National Agrarian Institute (INA).</p> <p>This Law focuses on, inter alia, land titling, recognition of private, public and municipal rights in forest lands and the creation of a land fund.</p> <p>Creation of the Honduran Forestry Development Corporation (COHDEFOR) to manage the country's forest resources.</p> <p>Recovery of national rural land. Titling of land suitable for forestry is prohibited.</p> <p>Its Chapter III recognizes Agrarian Reform as an integral process and means of transforming the country's agrarian structure.</p> <p>The <b>Property Institute (IP)</b> is set up as a decentralized entity of the Presidency of the Republic. It has its own legal personality and assets, and functions in a way that is technically, administratively and financially independent.</p> <p>This Agreement sets up the Intersectoral Commission for the Titling, Extension, Sanitation and Protection of the Lands of the Garifuna and Miskito Communities of Honduras to help protect the property rights of these communities over their lands.</p> <p>Through this Law, the process of regularizing land for indigenous and Afro-Honduran peoples will be applied by the Property Institute.<sup>9</sup></p>	<p><b>1962:</b> 1962: With the Agrarian Reform Law, the la National Agrarian Institute (INA) carries out titling of indigenous community lands from now on.</p> <p><b>1982:</b> The <b>Constitution recognizes</b> the State's responsibility for taking measures to protect the rights of indigenous communities, particularly those related to property, land and forests.</p> <p><b>1992:</b> Law on the Modernization of the Agricultural Sector, including provisions on land titling for communities of indigenous peoples.</p> <p><b>May 1995:</b> ratification of <b>ILO Convention 169</b>.</p> <p><b>2001:</b> Executive Agreement No. 035 sets up the Intersectoral Commission for the Titling, Extension, Sanitation and Protection of the Lands of the Garifuna and Miskito Communities of Honduras.</p> <p><b>2002:</b> Ratification of the <b>International Convention on the Elimination of All Forms of Racial Discrimination</b>.</p> <p><b>2011:</b> Approval of the Regulations for the Property Law, in which Chapter II of Title VIII stipulates the procedures for processes of "Regularization of land ownership for Indigenous and Afro-Honduran Peoples" (validating the inter-community titling procedures).</p> <p><b>2007:</b> proposed Special Law for the Comprehensive Development of Indigenous and Afro-Honduran Peoples of Honduras (not yet approved).</p> <p><b>2010:</b> the regulations for the Property Law (resolution CD-IP no. 003) clarified the process of land regularization for indigenous and Afro-Honduran peoples.</p>	<p><b>1997:</b> establishment of the Support Programme for Indigenous Peoples (PAPIN-DIPA) for the preparation of a draft law submitted in 2007 with the bill "Special Law for the Comprehensive Development of Indigenous and Afro-Honduran Peoples of Honduras"</p> <p><b>2004:</b> National Forestry Programme (PRONAFOR)<sup>d</sup> aims to consolidate the competitiveness of forest resources for the satisfactory fulfilment of their main functions: social, economic and environmental.</p> <p><b>1997-2004:</b> Rural Areas Administration Project (PAAR), funded by the World Bank to modernize territorial administration and the management of natural resources (particularly public forest land).</p> <p><b>2004-2010:</b> Land Administration Programme in Honduras Phase I (PATH I) set up to succeed PAAR, aimed to set up an integrated and decentralized land administration and land survey system for greater inclusion of indigenous peoples.<sup>e</sup> The National Property Administration System (SINAP) was set up as part of this project.</p> <p><b>2011- 2017:</b> implementing Phase II of the Land Administration Programme in (PATH II), which helps to demarcate and title territories for the Miskito indigenous population.</p> <p>The project on Land Planning and Environmental Protection in the Río Plátano area (PROTEP), which was launched in 2010, set up a bilateral project involving the Governments of Germany and Honduras. The project seeks to support the titling of ancestral lands, contribute to the good management of land and natural resources and encourage the population of the area to get involved with protection, conservation, monitoring and oversight actions in the regions of western Honduras, Olancho and the Río Biosphere Reserve.</p>	<p><b>1952:</b> The law establishing the Ministry of Agriculture established one of its main activities as the supervision of forest concessions. No State permit was required for forest exploitation on State or <i>ejido</i> lands.</p> <p><b>1972:</b> Enactment of Forestry Law with the first regulations for forest areas. The property regime defined public and private forest areas. The Catalogue of Inalienable Public Forestry Heritage (CPPFI) was created. This nationalized forest administration.</p> <p><b>1974:</b> Creation of the Honduran Forestry Development Corporation (COHDEFOR) as the government institution for the national exploitation of forest resources. This law nationalized forest administration and exploitation and strengthen the State's control over forest lands. The law also set up the Social Forestry System through which the Areas of Integrated Management (AMI) were set up.</p> <p><b>1984:</b> General Forestry Regulations established the definition and classification of public and private <i>ejido</i> forest areas and protected natural areas.</p> <p><b>1992:</b> The Law on the Modernization and Development of the Agricultural Sector (LMDSA) returned forest management to landowners. A management plan was required for forestry exploitation. The process began to regularize the rights of populations settled in national forests.</p> <p><b>1995:</b> Ratification of the Convention on Biological Diversity.</p> <p><b>2004:</b> The approval of the Property Law recognized customary law and the right to communal property, exploitation of natural resources, management of Protected Areas within indigenous territories in conjunction with the State and the legal situation in terms of third parties.</p> <p><b>2007:</b> Law on Forestry, Protected Areas and Wildlife (Decree No. 98 of 2007) declared the forest land of owners as being private or State property. Recognition of the right of indigenous and Afro-Honduran peoples over forest areas in land traditionally owned by them. This Law is an exemption from the prohibition of human settlements in protected areas by indigenous and Afro-Honduran peoples.</p>

<sup>d</sup> Establishes one of the four programmes in the Agro-food and Rural Environment Sector.

<sup>e</sup> In this phase, the modernization of property records continued and a more permanent management structure was developed through the Property Institute, while attempts were also made to develop a consistent legal and regulatory framework for the land rights of indigenous and Afro-Honduran communities.

<sup>f</sup> Unlike the *ejidos* in Mexico, in Honduras this term refers to municipal land.

<sup>9</sup> Decree 82-2004 of 28 May 2004, Chapter III, Article 94.



## Nicaragua

Legal land reforms		Legal reforms on titling of indigenous lands		Legal reforms on management of natural resources in indigenous communities
Laws	Institutional change	Titling laws	Programmes/Initiatives	Natural resource management laws
<p><b>1981:</b> Agrarian Reform Law (Decree No. 782).</p> <p><b>1981:</b> Executive Decree No. 830.</p> <p><b>1986:</b> Reform of the Agrarian Reform Law.</p> <p><b>1987:</b> Law 28 (Autonomy Statute of the Regions of the Atlantic Coast of Nicaragua.)</p> <p><b>1995:</b> Property Stability Law No. 209.</p> <p><b>2002:</b> Law No 445 on the Communal Property Regime of Indigenous Peoples and Ethnic Communities in the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maiz rivers.</p>	<p>The aim was to democratize ownership through a new distribution of idle or poorly used estates.</p> <p>The Nicaraguan Institute of Territorial Studies (INETER) was set up as a State technical and scientific body to generate and provide basic information on land tenure. It was responsible for carrying out territorial planning studies. It established the principle of joint titling in territorial planning programmes.</p> <p>This legal reform paved the way for expropriation of land.</p> <p>This Law created the regions of the Atlantic Coast (RAAS and RAAN).</p> <p>In order to increase the efficiency of the institutional framework for land management, the Government merged several State institutions under the Intendancy for Property, which was part of the Ministry of Finance and Public Credit.</p> <p>Law 445 makes CONADETI (the National Commission for Demarcation and Titling) the coordinating body for the demarcation process, budget administration and so on.</p>	<p><b>1978:</b> Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination.</p> <p><b>1987:</b> Law 28, Statute of Autonomy of the Indigenous Regions of the Atlantic Coast of Nicaragua, formation of the South Atlantic Autonomous Region (RAAS) and the North Atlantic Autonomous Region (RAAN).</p> <p><b>2002:</b> Law 445 recognized communal lands and natural resources, awarded sovereignty to the Autonomous Regions and regulated the land demarcation and titling processes in the RAAS and RAAN regions.</p> <p><b>2010:</b> ratification of ILO Convention 169.</p>	<p><b>2007:</b> The Property Regularization Programme in Nicaragua (PRODEP), financed by the World Bank and the Millennium Challenge Account, updates the land registry and regularizes tenure in several western Departments. It is also involved in demarcating Protected Areas and in indigenous territories in the autonomous Atlantic regions. PRODEP demarcated and titled 15 Miskito and Mayagna inter-community territories (covering 214 indigenous and Afro-descendent communities). The territory covers 22,478.996 km<sup>2</sup>: RAAN: 13,913 km<sup>2</sup> (11 territories); RAAS: 6,481 km<sup>2</sup> (2 territories); and central region: 2,229 km<sup>2</sup> (3 territories).<sup>h</sup> The Programme is still in force and is being extended.</p>	<p><b>1987:</b> Article 9 of Law No. 28 refers to natural resources. In terms of rational exploitation of natural resources in the RAAS and RAAN regions, it recognizes "the ownership rights over communal lands and that it shall benefit in a fair proportion its inhabitants through agreements between the Regional Government and Central Government".</p> <p><b>1995:</b> Ratification of the Convention on Biological Diversity.</p> <p><b>1996:</b> Law No. 217. The General Law on the Environment and Natural Resources set up the National Ombudsman for the Protection of the Environment and Natural Resources.</p> <p><b>2001:</b> Resolution of a complaint against Nicaragua brought by indigenous people from the Mayagna (Sumo) Awastzintzi community in relation to the award of a concession authorized by the Nicaraguan State to a third company in their territory, as well as to the State's failure to comply with the American Convention on Human Rights.</p> <p><b>2006:</b> The Forest Closed Season Law made commercial forestry exploitation impossible in the RAAS and RAAN regions.</p> <p><b>2007:</b> The regulations on Protected Areas allow administration of such areas to be granted to indigenous communities by the Ministry of Environmental and Natural Resources (MAREN). For protected areas within the RAAS and RAAN regions, the Ministry must coordinate with the authorities of the Autonomous Regions. Demarcated indigenous territories in the Biosphere Reserves are run under the joint management system.</p>

<sup>h</sup> [http://www.territorioindigenaygobernanza.com/web/index.php?option=com\\_content&view=article&id=192&Itemid=191](http://www.territorioindigenaygobernanza.com/web/index.php?option=com_content&view=article&id=192&Itemid=191) o [http://www.undp.org.ni/files/doc/1306430943\\_PNUD%20EXPERIENCIAS%20TERRITORIALES%20BAJA%20RESOLUCION.pdf](http://www.undp.org.ni/files/doc/1306430943_PNUD%20EXPERIENCIAS%20TERRITORIALES%20BAJA%20RESOLUCION.pdf).



## Panama

Legal land reforms		Legal reforms on titling of indigenous lands		Legal reforms on management of natural resources in indigenous communities
Laws	Institutional change	Titling laws	Programmes/Initiatives	Natural resource management laws
<p><b>1962:</b> Law No. 37 approving the Agrarian Code of the Republic</p> <p><b>1994:</b> Law 1 of 1994</p> <p><b>1998:</b> Law 41 (General Environment Law of the Republic of Panama)</p> <p><b>2007:</b> Resolution N° 583-R-267, of the Ministry of Government and Justice</p> <p><b>2009:</b> Draft Law No. 459</p> <p><b>2010:</b> Law No.59 creating the National Land Authority of Panama (ANATI)</p> <p><b>2011:</b> Reform of Law 1 of 1994</p> <p><b>2011:</b> Enactment of the new Agrarian Code</p>	<p>The main objective of the Agrarian Code is comprehensive agrarian reform and the abolition of land grabs of unfarmed or idle land.</p> <p>Established the National Institute for the Management of Renewable Natural Resources (INRENARE) as the body responsible for managing the forests and lands that make up the State's forestry heritage.</p> <p>INRENARE representation and functions come under the National Environment Authority (ANAM).</p> <p>The Law also set up the <b>National Advisory Commission on the Environment</b>, as a consultative body of ANAM for decision-making on matters of national and intersectoral importance, comprising representatives from Government, civil society and <i>comarcas</i>, who may also issue recommendations to the National Environment Council.</p> <p>This resolution created the National Directorate for Indigenous Policy to plan and coordinate orientation and assistance programmes and projects for indigenous peoples</p> <p>This regulation was approved for the allocation of coastal areas and stipulates legislation for implementing a mass titling process of ownership rights in favour of those people who have lived or worked on land for many years.</p> <p>ANATI combined the National Geographical Institute (IGN), the National Directorate for Agrarian Reform (DINRA), the National Land Administration Programme (PRONAT) and the Land Registry Directorate in a single body that will govern all titling and land administration processes.</p> <p>Reform of Law 1 of 1994 is expected to result in the establishment of the National Forestry Directorate (DINAFOR)</p> <p>Its basis is to regulate agrarian activity, enterprises and contracts, as well as sustainable land use. One of its aims is food security. The State leases out public land to achieve this.</p>	<p><b>1938:</b> Law 2 of 1938 created the first <b>Kuna Yala comarca</b> (Kuna ethnic group). The <i>comarca</i> established a form of inter-community titling.</p> <p><b>1941:</b> Definition of State responsibility to recognize land claims from indigenous communities.</p> <p><b>1967:</b> Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination.</p> <p><b>1972:</b> The new Constitution enabled recognition of new indigenous <i>comarcas</i>. It was recognized that indigenous lands should be handed over as property and not under another type of recognition of usage rights (Art. 126).</p> <p><b>1983:</b> Article 10 of Law 22 creates the <b>Embera-Wounann comarca</b> (Embera and Wounann ethnic groups).</p> <p><b>1996:</b> creation of the <b>Madugandí comarca</b> through Law 24 of 1996 (Kuna indigenous group with 12 communities: Akua Yala, Ibedi, Pintupu, Icandi, Piria, Cuinupdi, Nargandi, Ogobnawila, Diwar Sikua, Capandi and Tabardí).</p> <p><b>1997:</b> Law No. 10 of 1997 created the <b>Ngöbe-Buglé comarca</b> (Ngöbe and Buglé indigenous groups).</p> <p><b>1998:</b> Law 41 made it easier for the State to give special attention to indigenous and rural communities and to ensure that communities manage their lands under a communal regime.</p> <p><b>2000:</b> Creation of the <b>Wargandí comarca</b> through Law 34 (Kuna indigenous group with 3 communities: Nurra, Wala and Mortí).</p> <p><b>2008:</b> By means of a special procedure established by Law 72 in 2008, indigenous communities that were left out of titled <i>comarcas</i> can apply for a collective title. Unlike the <i>comarcas</i>, these communities are subject to government authority (Recio, 2011).</p>	<p><b>2001:</b> Launch of the National Land Administration Programme (PRONAT) financed by the World Bank, IDB and the Government of Panama. The aim of the Programme was to strengthen land security by updating the Land Registry and regularizing tenure in protected areas and indigenous reserves (titling and demarcation), in and beyond Chiriquí and Bocas del Toro. This helped to consolidate the National System of Protected Areas (SINAP).</p> <p><b>2009:</b> Two petitions presented to the Inspection Panel of the World Bank: one from the Naso indigenous group; the other from the Nögbé-Buglé group, referring to World Bank policies OD 4.20 (on indigenous peoples) and 13.05 (on project supervision). This situation and other problems led to an early withdrawal of World Bank funding in 2010.</p>	<p><b>1994:</b> Title 1 of Chapter II of Law 1 of 1994 stated that forest lands are considered forest heritage owned by the State (Art. 10). It also stated that the administration of forests and lands (that are State heritage) is the responsibility of INRENARE.</p> <p><b>1995:</b> Ratification of the Convention on Biological Diversity.</p> <p><b>1998:</b> Law 41 established the following constitutional principles: the State respects, protects and maintains the knowledge, innovations and practices of indigenous communities, as well as their traditional ways of life with respect for conservation and sustainable use of biological diversity. Carbon storage was recognized as an environmental service (Art. 79). The State was given the authority to manage these services, as they result from goods that belong to its heritage. Also, projects resulting from carbon storage activities should be shared with indigenous peoples, whether they live within or outside <i>comarcas</i> governed by a special regime. The National System of Protected Areas (SINAP) was created.</p> <p><b>2011:</b> The draft bill of Law No. 97 sought to amend Law 1 of 1994.</p>

## Costa Rica

Legal land reforms		Legal reforms on titling of indigenous lands		Legal reforms on management of natural resources in indigenous communities
Laws	Institutional change	Titling laws	Programmes/Initiatives	Legal and regulatory provisions
<p><b>1961:</b> Law No. 2825</p> <p><b>1982:</b> Law No. 6735</p> <p>Executive Decree No. 8487 of 26 April 1978 and Executive Decree No. 13568 of 30 April 1982</p>	<p>Institute of Land and Colonization (ITCO) set up to help convert hundreds of poor farmers into owners of their plots and small farms.</p> <p>ITCO became the Institute for Agrarian Development (IDA), with the same objectives carried over from the previous Law.</p> <p>These decrees established the legal personality and legal representation of indigenous communities as Associations for Integral Indigenous Development (ADII).</p>	<p><b>1967:</b> Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination.</p> <p><b>1977:</b> Indigenous Law No. 6172 (Art. 2) established ownership of the indigenous communities known as reserves within the country. This is a form of collective private property (although ownership is individual based on an internal right). It is inalienable, imprescriptible, non transferable and for the exclusive use of the indigenous community.<sup>i</sup></p> <p><b>1993:</b> Costa Rica ratified ILO Convention 169 of 1989.</p>	<p><b>1997:</b> The PES Programme began to be implemented in indigenous communities, mainly under the Protection arrangement.</p>	<p><b>1977:</b> Indigenous Law (Arts. 2 and 5) recognized the administrative authority of indigenous communities over the natural resources in their land, and recognized that the right to exploit those resources belonged exclusively to those communities.</p> <p><b>1996:</b> Ratification of the Convention on Biological Diversity.</p> <p><b>1996:</b> Forestry Law 7575 created the National Forestry Financing Fund (FONAFIFO) – which comes under the Environment and Energy Ministry – as a governmental institution to fund the forestry sector and manage the payment and sales of environmental services (Payment for Environmental Services (PES) and Certificate for Environmental Services). Carbon capture was officially recognized as an environmental service. The Law prohibited the change of land use in private territories to protect forest areas and, in accordance with the Civil Code, guaranteed exclusive rights for the use and administration of the resources on such land.<sup>k</sup></p> <p><b>1997:</b> Decree 26,511: prohibited the commercialization of wood species within indigenous reserves.</p> <p><b>2002:</b> Executive Decree No. 30762 centralized all State management of PES within FONAFIFO.</p> <p><b>2007:</b> The Procedures Manual for the payment of environmental services, Agreement IX, of Session 2 of 14 February 2007, established priority criteria for awarding PES in indigenous reserves for forest conservation purposes or to promote agro-forestry systems. Given the high running costs, the Manual authorized the regional director of Conservation Areas to certify the area. According to the Manual, the beneficiary of the PES contract is the indigenous community through the Integral Development Associations (ADI) and the Ministry of Environment, Energy and Telecommunications. The community then distributes the benefits.</p>

<sup>i</sup> <http://www.una.ac.cr/ambi/Ambien-Tico/102/cajiao102.htm>.

<sup>j</sup> Roque Roldan, Models for Recognizing Indigenous Land Rights in Latin America, 2004, and Ulate Chacón, Dr. Enrique Napoleón, Implicaciones de la tenencia y la gestión forestal, FAO, 2009.

<sup>k</sup> Roque Roldan, Models for Recognizing Indigenous Land Rights in Latin America, 2004.



## ANNEX 3

# Content of R-PPs on the situation of indigenous territories: Mesoamerican countries

Country	R-PP document/ paragraphs on the situation of indigenous territories	Page number of R-PP document
<b>Guatemala</b>		
Source: Readiness Preparation Proposal (R-PP) for Guatemala, 02.03.2012, Forest Carbon Partnership Facility (FCPF), United Nations REDD Programme (UN-REDD).		
	The recent reforms of property regimes have had negative effects on equality and social relations, particularly in Petén. Historical discrimination against indigenous peoples in terms of use and land tenure systems has hampered their participation in sustainable forest management.	p. 54
	In Guatemala there are more than 1.5 million hectares of communal lands which include lands of indigenous people and mestizo communities which for many years have been protected and managed in a sustainable manner by indigenous peoples and local communities.	p. 54
	The Guatemalan Land Registry Law (Decree number 41-2005, Congress of the Republic of Guatemala) defines the communal land as collective entities, which are under the "ownership, possession or tenure" of farmer or indigenous communities. Also, this Act contains provisions which recognize those lands that have traditionally been under communal regimes even if they are registered in the name of the State, municipalities or individual people as communal which could generate some expectation for indigenous peoples and communities, in the regularization or recognition of their rights.	p. 54
	Challenges and opportunities for REDD+: Respect, recognition and exercise of indigenous rights, particularly those relating to land and territory, FPIC processes and the recognition of contributions of traditional knowledge.	p. 60
	Territorial management must take special care in recognition of the collective and individual rights to land, as well as the clarification of these lands where REDD+ activities could be implemented, all this with an emphasis on respect for the rights of indigenous peoples to their territories and natural resources.	p. 66
	The consultation process with indigenous peoples is essential to legitimize and take into account their rights. This policy seeks to identify and address the impacts of REDD+ on indigenous peoples.	p. 86
	The State will ensure the legal recognition and protection of these lands, territories and resources. Such recognition shall duly respect customs, traditions and indigenous land tenure systems. The indigenous peoples will be guaranteed their right to redress, by means that can include restitution or, when not possible, a fair and equitable compensation for the lands, territories and resources that traditionally have been owned or occupied or used otherwise.	p. 86-87
<b>Honduras</b>		
Source: Readiness Preparation Proposal Draft (R-PP) for Honduras, 10.2011, Forest Carbon Partnership Facility (FCPF), United Nations REDD Programme (UN-REDD).		
	Relevant Interested Parties are identified for the REDD+ processes: owners of land suitable for forestry with no trees; forest owners; users of national forests; indigenous peoples according to definition of ILO Convention 169, and their local, regional and national organizations.	p. 4
	<i>REDD+ National Working Group</i> The REDD+ National Working Group was set up to promote inter-sectoral dialogue between the Government, civil society, indigenous peoples, relevant international cooperation and academia, on all matter relating to forestry sector issues.	p. 20
	<i>Preparation of consultation</i> Given that Honduras recognizes the right of indigenous peoples to be properly consulted in accordance with guidelines defined by themselves, and following notification of 182 leaders of 70 grassroots indigenous organizations.	p. 5
	<i>Plan for consultation and participation in the preparations for REDD+</i> As part of follow-up, a consultation plan has been prepared on asking indigenous communities what, how, when and with whom consultation will take place for the preparation process of this R-PP.	p. 27

<p><i>Framework of implementation for REDD+</i></p> <p>In terms of entitlement to rights, Honduras recognizes the right of indigenous and Afro-Honduran peoples over forest areas on land traditionally owned by them, in accordance with national laws and ILO Convention 169 (Article 45 of the Law on Forestry, Protected Areas and Wildlife, 2007). The interpretation is that, during community management contracts, carbon rights and rights on Payment for Environmental Services can be transferred to the beneficiary community. The rights of indigenous and Afro-Honduran communities are also established in the above-mentioned Article 45.</p>	p. 7
<p><i>The REDD+ National Strategy respects the knowledge and rights of indigenous peoples and takes into account relevant international obligations</i></p> <p>Based on the Forestry Law and the Property Law and their respective regulations, there is a procedure to regularize the community rights that indigenous peoples have over certain lands. This REDD+ National Strategy has demonstrated the need to harmonize this legal framework to propose legal foundations to enable the provision of and compensation for ecosystem services within their ancestral lands.</p>	p. 13
<p><i>Main observations in the consultations in preparation for REDD+</i></p> <p>Some participants are sceptical about whether the Government really will consider what indigenous peoples say about REDD+. Organization leaders state that they distrust the Government because historically it has not delivered, and they could end up with a REDD+ National Strategy that has not been the subject of consultation. Some considered that the Government should demarcate indigenous territory, with a view to increasing commitment to conservation.</p>	p. 29
<p><i>Ill-defined tenure of forest land</i></p> <p>The new Law establishes a forest land regularization process in coordination with the Property Law and Convention 169 on Indigenous Peoples. The results of applying this article cannot yet be presented, but serious obstacles are predicted owing to a lack of financial resources for recognizing established rights.</p>	pp. 45- 46
<p><i>Options for regulating the recognition of indigenous peoples' rights</i></p> <p>Creation of a coordination mechanism between the Property Institute (IP), the Institute for the Conservation of Forests (ICF) and the Secretariat of Environment and Natural Resources (SERNA) in terms of the rights of indigenous peoples living in national land suitable for forestry; Encouraging harmonization of the regulatory framework concerning land regularization for indigenous peoples (Property Law and its regulations and the Law on Forestry Development and Conservation, Protected Areas and Wildlife and its regulations); or promoting the regularization of forest lands where indigenous peoples have ancestral rights.</p>	p. 57
<p><i>Options for reducing poverty that may in turn promote sustainable forestry management of national forests</i></p> <p>Implementing the valuation and payment of ecosystem services at the national and particularly the local level, to bring about true recognition of these externalities for the local communities and indigenous populations involved in sustainable forest management and forest conservation.</p>	pp. 58 - 59
<p><i>Entitlement of rights</i></p> <p>During community management contracts, carbon rights and rights on Payment for Environmental Services can be transferred to the beneficiary community. The rights of indigenous and Afro-Honduran communities are also established in the above-mentioned Article 45.</p>	p. 64
<p>Social and environmental impact: social and environmental risks and opportunities for indigenous peoples and local communities must be identified and measured, as well as protecting the rights of indigenous peoples. The World Bank's operational policies on indigenous peoples (4.10), environmental assessment (4.01) and forests (4.36) provide the reference framework for the proposal that arises from the REDD+ strategy.</p>	p. 67
<b>Panama</b>	
Source: Readiness Preparation Proposal (R-PP) for Panama, 16.05.2009, Forest Carbon Partnership Facility (FCPF), United Nations REDD Programme (UN-REDD).	
<p>In the short term, the Strategy has to deal with a series of consequences of the old development model which are still negatively affecting deforestation in Panama, including the low opportunity cost represented by forests for the productive activities of the indigenous communities. These problems have generally been tackled by a series of initiatives designed to facilitate the change process in environmental management, by the organization of a well-structured market for environmental goods and services, as the best way of developing natural capital by developing social capital.</p>	p. 10, 11
<p>The Sustainable Forestry Model based on the National Environment Strategy focuses on three main programs: the Ecosystem Restoration Programme; the Forest Administration Programme and the Training, Research and Dissemination Programme. These programmes use watersheds as a unit of management, thus including the protected areas, to encourage industrial and community reforestation on lands with a forestry potential and to improve social, economic and environmental indicators.</p>	p. 11



<p>The R-PP establishes that, for activities, works or projects carried out within the territory of indigenous communities, consultations will focus on concluding agreements with community representatives. Article 103 of Law 41 of 1998 states that for activities, works or projects carried out within the territory of indigenous communities, consultations will focus on concluding agreements with community representatives relating to their rights and customs, as well as on the granting of benefits to compensate for the use of their resources, knowledge or land. When granting any type of authorization relating to the development of natural resources, in the <i>comarcas</i> or on lands of indigenous communities, preference will be given to projects submitted by their members, provided that they comply with the requirements and procedures laid down by the competent authorities. Article 105, for its part, establishes that, in the case of activities involving the development of natural resources on land of comarcas or indigenous peoples, they are entitled to a share in any resulting economic benefits, if such benefits are not covered by existing laws.</p>	<p>p. 17</p>
<p><b>Nicaragua</b></p>	
<p>Source: Readiness Preparation Proposal (R-PP) for Nicaragua, 20.04.2012, Forest Carbon Partnership Facility (FCPF), United Nations REDD Programme (UN-REDD).</p>	
<p>In Nicaragua, the main achievements in the governance process have allowed for significant advances in communication and alliances with regional governments of the Autonomous Regions of the North and South Atlantic, which has allowed an active participation of the indigenous communities representatives in the country, and has promoted local participation and consultation of the different stakeholders involved and interested in the development of the forest sector in the country.</p>	<p>p. 83</p>
<p>Over the last 5 years, certain rights have been restored to the indigenous peoples and communities, among them, the demarcation, entitlement and title transfer of their ancestral lands, that are mainly in broad leafed and conifer forested areas.</p>	<p>p. 84</p>
<p>In 5 years the Government has handed over property titles a over 250 communities belonging to 17 indigenous territories of the Caribbean Coast, equivalent to 30% of the national territory . Another 5 territories are undergoing this entitlement process.</p>	<p>p. 84</p>
<p>In addition, in the majority of the territories, their authorities have been recognized, and Indigenous Territorial Governments have been constituted, with the power to manage their own territories. An important matter that is still pending with part of these territories refers to their territorial reorganization process. These territories were indefinitely occupied over a large number of years by colonists, who in the last decades have settled in these territories. Due to the delicate nature of this situation, this Government has proceeded with extreme care. There is a permanent dialogue, the implementation of plans of cohabitation and reorganization that allow for non-violent alternatives, as well as the implementation of conflict resolution instances, to facilitate the fluidity of these processes.</p>	<p>p. 83</p>
<p>With the support of the core project of the biological corridor of the Trans-border Reserve, carried out by Ministry of Environment and Natural Resources (MARENA) and financed by the World Bank, the management plan for the BOSAWAS Biosphere reservation (located in the RAAN) was updated. This initiative is monitoring the effectiveness of the management of the reservation through socio-environmental indicators validated and applied by the indigenous communities, which represents an significant contribution to the REDD+. Additionally, the exchange rates over the last 5 years of the indigenous territories in BOSAWAS are 9 times lower than the average municipalities with "mestizos" present in the buffer zone.</p>	<p>p. 85</p>
<p><b>Costa Rica</b></p>	
<p>Source: Readiness Preparation Proposal (R-PP) for Costa Rica, August 2010, Forest Carbon Partnership Facility (FCPF), United Nations REDD Programme (UN-REDD).</p>	
<p>The R-PP uses the terms Indigenous Peoples and Local Communities, in accordance with ILO Convention.</p>	<p>p. 65</p>
<p>Costa Rica operates a Programme to Establish (and Maintain) a Land Registry to improve legal certainty on land rights. The Registry aims at encouraging public and private investments in Costa Rica. The Programme is made up of three components, the second of which supports the implementation of actions to identify, prevent and resolve conflicts in the ownership and use of lands in special lands. This component currently operates in 15 of Costa Rica's indigenous territories, collecting information relating to land tenure and land use. To date, there is a map at a scale of 1:5000 of the majority of territories; preliminary cadastral mosaics and identification of occupants and non-indigenous owners.</p>	<p>p. 43</p>
<p>Costa Rica continues to reduce the rate of deforestation in regenerated and old growth or ancient forests. If the rate of deforestation observed during the period 2000-2005 in old growth and secondary forests were reduced by half, the natural regeneration in the private forest outside of Guanacaste would double and triple in indigenous reservations.</p>	<p>p. 44</p>



FONAFIFO should make available additional incentives above the current level in the PPSA for a total of 8,500 ha per year for the private owners of this land, to induce the regeneration and establishment of forest plantations. Both the regeneration and retention must be focused on land whose opportunity cost implies that the PSA is more cost effective than the alternative land use (e.g. lands that are suitable for afforestation, Indigenous Territories and private reserves).	p. 45
To generate options concerning the lack of competitiveness in the use of forests in indigenous territories, there are plans to: i) maintain the PES programme to conserve coverage, ii) adapt forest management systems to the reality of primary indigenous forests, and iii) support the National Certification System through the sustainability commission to establish principles and criteria for the management of natural forests by indigenous communities. Another cause of deforestation are the squatters within indigenous territories. This will have to be dealt with through coordination and support from the Office for the Registration and Regularization of Special Lands, which include indigenous territories.	p. 52
Given that the owner of the land and the forest is the owner of the emission reduction rights, it is important to clarify the possession and ownership of lands in areas of public domain, as well as to promote the regularization of the land titles in indigenous territories. This would avoid that those in possession of the land but without land title are excluded from REDD+ benefits.	p. 61
Social and environmental risks and opportunities, specifically for indigenous peoples and local communities, should be identified and measured. Safeguards that guarantee the rights of the indigenous peoples are required.	p. 65
<b>México</b>	
Source: Readiness Preparation Proposal (R-PP) for Mexico, June 2011, Forest Carbon Partnership Facility (FCPF).	
<i>Participation and consultation plan.</i> The design of the REDD+ strategy will involve the National Commission for the Development of Indigenous Peoples (CDI). The strategy will generate significant reductions in emissions and offer benefits thanks to the active involvement of land owners and indigenous communities. A series of criteria and indicators will be developed in close consultation with stakeholders to identify key areas for REDD+ activities, with the emphasis on indigenous communities and ejidos.	P 8 y 9
Other issues for the consultation process include indigenous rights, how to include marginalization indices of forest communities, and law enforcement and governance matters.	P 14
A significant percentage of woodland with forest coverage is administered by ejidos and indigenous communities. As a result, it is important to note that effective and inclusive consultation with these interested parties is essential for implementing REDD+ in Mexico. Consultation with indigenous peoples should be based on the principles of FPIC, respecting ILO Convention 169 and World Bank operational policies 4 and 10 on safeguards for indigenous peoples.	p. 15
For indigenous communities, the three levels of Government recognized their property and the way they conduct themselves on the property to use the natural resources and land in accordance with their customs and practices, as stipulated in Article 2 of the Political Constitution of Mexico.	P 20
<i>Ownership of forest carbon and land tenure</i> Mexican legislation recognizes the right of indigenous peoples to determine their own rights, which includes governing themselves using their own rules and traditions. The same article also protects the right to lands for indigenous communities. This is an advantage for Mexico in the process of conceptualizing land tenure and its links with carbon rights, as this relationship is not defined in any law.	P 35
<i>Implementation of REDD+</i> Agrarian communities, ejidos and indigenous communities now have recognizable patterns of community governance that are part of Mexico's rural culture and with which the State is used to interacting. Consideration is being given to the involvement of indigenous communities and ejidos, so that they can take part in defining a community monitoring system using free, prior and informed consent.	P 36



## ANNEX 4

# Programmes to Update Land Registries and Regularize Land Tenure in the Region

Country	Name	Area of intervention	Implications for indigenous lands	Sources of cooperation	Launch
Guatemala	Land Administration Project (PAT), Phases I and II	8 Departments 12 + 41 municipality.	Application of the Regulations on the Declaration of Communal Lands	World Bank	1997
Honduras	Land Administration Project in Honduras (PATH), Phases I and II	10 Departments 27 + 21 municipalities.	Demarcation and titling of 3 indigenous territories in the Department of Gracias a Dios	World Bank, Nordic Development Fund	2004
Nicaragua	Property Regularization Programme (PRODEP)	4 Departments (38 municipalities) 2 autonomous regions	Demarcation and titling of 15 indigenous territories in RAAS and RAAN	World Bank, Millennium Challenge Account, Nordic Development Fund	2005
Panama	National Land Titling Programme (PRONAT)	5 provinces 21 municipalities	Demarcation of two <i>Comarcas</i> (Ngobe Bugle and Kuna Yala) and indigenous territory of the Teribe-Naso	World Bank, IBD	2000
Mexico	Programme for the Certification of Ejidal Rights and Titling of Urban Plots (PROCEDE)	National	Delimitation of indigenous communities Titling of <i>ejidos</i> in the name of members	Mexican Government	1994

Sources: World Bank, Project Appraisal Documents available on World Bank website.

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