



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

² *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.³ 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 (CO₂) 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 CO₂ 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 CO₂ reduction aims, but also the efforts of national governments to reduce marginalization and poverty among indigenous populations in forest

³ 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,⁴ 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 guidelines⁵ (see annex 1. Central American countries and their REDD+ preparation phase).

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

⁵ 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.

