



Global Landscapes Forum | Paris

Launching the new climate and development agenda

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Photo by Sisendu Gayen

Background Brief

Tenure and rights

This background brief was prepared for participants of the 2015 Global Landscapes Forum.



Why are tenure and rights important for achieving climate and development goals?

Natural resource access rights and land tenure are among the top challenges facing REDD+ and other landscape management initiatives. Frequently, forest and farmland tenure is strongly contested and/or very unclear. Both colonial and post-colonial governments have sought to expand their control over timber, agricultural land and minerals. The result has been the suppression and sometimes extinguishment of traditional tenure systems. Where they persist, customary rights and tenure systems often go unrecognized and carry little to no force in modern legal systems. Traditional landholders may be left feeling like trespassers in their own homes.

There is now good evidence that strong customary tenure and clear, uncontested land rights lend themselves to good stewardship of landscapes. By contrast, weak, poorly defined rights and insecure tenure are strongly associated with deforestation and landscape degradation. This is a key reason why tenure and rights are so important to the success of REDD+, community forestry programs, and integrated landscape management. In many cases, recognition and security of tenure are pivotal to achieving climate and conservation objectives.

Since the mid-1980s, more than 200 million hectares of forestland have either been legally transferred from state to community/indigenous ownership or recognized as such, although this trend is not evenly distributed around the world and is far from complete (Larson, Barry, Dahal et al. 2010). Almost 75 percent of all forestland is owned and administered by governments, while a little over 2 percent of forest under state control is designated for community use. Only 9 percent of the world's forests are in community hands, while 14 percent are privately owned. In less developed countries, the proportion of forests under community control is much higher: it rose from 22 percent to 27 percent between 2002 and 2008. Worldwide, governments legally recognize only a small fraction of the 65 percent

of all lands thought to be under customary community tenure. Some 18 percent of all land is formally controlled or designated for indigenous peoples and local communities, but the disparities between countries are considerable (Larson, Barry, Dahal et al. 2010).

Secure land tenure and control of access to natural resources are widely recognized as preconditions for poverty alleviation and food security, as well as good environmental stewardship. Denying women and other marginalized groups their right to access forest resources further hampers progress. Enforceable rights – including the right to exclude outsiders – are essential for the protection of local livelihoods. So far, however, tenure arrangements in forestlands have tended to favor already privileged, powerful actors, such as logging, livestock and mining companies. Where governments directly or indirectly deny local people's access to forests, they may deny them incomes derived from small-scale timber and non-timber industries – incomes that enable better forest management overall. Piecemeal and uneven as it is, the shift reflects a growing recognition of not only people's rights but also the benefits of traditional ownership systems, with the impetus coming from above and below. The Sustainable Development Goals (SDGs) present an opportunity to refocus efforts on tenure and rights reform. Recently, a group of NGOs, including the International Union for Conservation of Nature and Oxfam International, called for the incorporation of land rights indicators into the SDGs to better gauge progress (Action Aid International et al. 2015). Establishing a clear and secure tenure foundation is integral to the carbon goals of REDD+, which in turn are bound up with the livelihoods, health and rights of all forest stakeholders. A binding global climate change agreement would drive progress on tenure reform in many countries.



What are some of the key issues?

There exists almost no land that is not owned by someone – although that ownership may be unclear.

A failure to recognize ownership, including customary land rights and tenure systems, will have consequences for developers and managers of REDD+ and similar schemes. Often, there is a mixture of formal and informal tenure regimes within a given landscape, and discerning the land rights of communities is especially problematic in post-conflict situations. Yet understanding these rights is pivotal to the success of any program, whether they receive legal recognition or not. There is a growing body of literature that can help guide companies, donors and program managers through the complexity of local tenure systems.

Private property rights don't necessarily provide security.

Individual land titles may not provide as much security as is often assumed (see Case Study). And, in some circumstances, social ties are more powerful than contractual ones. Tenure may consist of a mosaic of property rights, both formal and informal, individual and collective. What does appear to be critical to long-term security is the formality of land rights. For example, while a private, formal title does confer advantages such as legal recognition, a collective title may be the one thing holding a community together in the face of market pressures to break

with tradition and convert forest property to some other use. Moreover, access to common property is particularly important to the poor, who rely heavily for income and nutrition on products derived from forests, fisheries and pastures managed collectively.

Landholders don't necessarily want formal land titles.

In places where formal arrangements, including law enforcement, are weak and trust in the state is low, there is less incentive to acquire land title. For one, securing legal title can be prohibitively expensive. And some people prefer the flexibility of informal property arrangements.

Formalizing land title will not always see investment, productivity and incomes rise on farmland.

Certification or titling seems to yield significant gains in agricultural productivity in Latin American and Asian cases, but only weak or modest gains in Africa. Generally, the effects of titling on access to credit appear to be weak at best. The reasons are complex and seem to arise from differences in customary tenure institutions, and differential access to labor, capital and markets, among other factors.



Formalization of tenure alone will not necessarily solve the problem.

Reform of tenure and access rights involves more than formalization and certification. Rather, it should be seen as part of a package of governance reforms, tenure systems and public investments in education, infrastructure and other elements that enable landholders to capitalize on reforms.

Women are not simply victims of gender-based oppression.

Rural land management is certainly still plagued by disparities between men's and women's property rights. However, the picture of gender relations, decision-making, and tenure now emerging from research is much more nuanced (Sunderland et al. 2014). Strong female voices are being heard in local decision-making, suggesting it is possible to overcome inequity and stereotypes, foster cooperation, strengthen women's bargaining power, and mobilize women for participation in tenure reform.

Case study

Property rights, tenure security, and forest protection in the Amazon

The formalization of individual property rights is widely seen as a prerequisite for resolving conflict, relieving poverty and reversing ecological deterioration. In particular, economists of the property rights school argue that individual land title underpins tenure security. With it, they argue, comes material progress and improved health and environmental quality.

However, a recent study of 21 indigenous and mestizo communities in Amazonian Peru and Ecuador shows a more complex reality: individual land titles may not provide the security theorists presume (Cronkleton and Larson 2015). In fact, social relationships can be more powerful than legal ones.

The study, carried out by the Center for International Forestry Research (CIFOR) and funded by USAID and GIZ, starts from an understanding that clear and secure tenure is essential to protect the livelihoods and rights of forest communities, as well as the forest ecosystem itself.

CIFOR looked at tenure systems across a mix of ethnic groups and landscapes in Ecuador's Napo Province and in the Ucayali and Huánuco regions of Peru, to clarify how tenure might be secured. What researchers discovered is a shifting mosaic of informal and formal rights, both individual and collective, and they were surprised to find that, despite the diversity, three common threads ran through all communities.

First, a legal document of some kind seems essential. This may or may not be an individual title, however. Second, active land management deters others from claiming the property. Third, relationships with neighbors and the community as a whole have a profound bearing on security, even for individually held lands.

Where governance is weak, collectivism and social relationships come strongly into play. Where the state is not trusted to defend people's rights, then legal title is unlikely to hold the same weight as it does elsewhere and local rules are often seen as more legitimate.

At the same time, people also want individual rights to ensure they benefit from their hard work and investments in their land. The study revealed pros and cons of both individual and collective titling. Holding an individual title makes it easier to get credit, for example, but the title tends to be relatively expensive to obtain in the first place. Moreover, collective title is closely tied to tradition and community solidarity, which makes it easier to resist market pressure to convert forestland to some other use. A formal title to land, however, may prove no better than the paper it is written on when it comes to keeping a forest standing.

Land rights are dynamic, and titling may afford owners greater flexibility, allowing them to divide land, hand it down to heirs, or sell it and move on as circumstances change. Even so, such legal transactions are not cheap. And, where governance institutions are unclear or weak, or where governments are unable or unwilling to establish a fair playing field, people will continue to rely on informal institutions.



What can participants learn about tenure and rights at the 2015 Global Landscapes Forum?

Participants will learn from a variety of experiences and examples of land tenure reform that are underway around the world, in both developed and less developed countries. Speakers will grapple with topics as diverse as the role of indigenous peoples and collective land management in sustainable landscapes, the opportunities for cooperation in reform, the role of governments and companies, the place of REDD+ in further reform, the challenges faced by traditional landholders in securing their rights, the role of gender in landscape restoration and the potential for livelihoods through the recognition of common property. Discussions will also look into what is possible in the absence of leadership by governments on tenure security. The dialogue will give voice to varying and constructive points of view on these and other issues, with a wide range of stakeholders represented.





Who are the key audiences for the discussion?

As with the presenters, the audiences are expected to be diverse, give the centrality of tenure issues and reform to landscape management and several SDGs.

Policy makers working in different ministries and at various scales should gain a better understanding of the role of government in tenure reform and the enforcement of rights. They will also gain an appreciation of the importance of rights and tenure issues to development, conservation, forestry, agriculture and other portfolios.

Non-governmental organizations, in particular those in the conservation and development arenas, should acquire a better appreciation of the role of local communities and indigenous peoples in sustainable landscape management. NGOs will be able to draw on the successes and lessons of partnerships and experiences in both developing and developed countries.

For the *private sector*, an understanding of tenure and rights issues is fast becoming essential for doing business, especially in the developing world. While the issues are complex and tenure situations not always clear, there is a growing body of knowledge to guide engagement with local communities and indigenous peoples.

Interested in tenure and rights?

These sessions take a closer look...



Indigenous Peoples' rights and land tenure: Fostering partnerships to tackle climate change

International Indigenous Peoples' Forum on Climate Change (IIPFCC), The Nature Conservancy (TNC)

Saturday, 5 Dec: 15.30-17.00; Room: Amphithéâtre Bleu

Commons tenure for a common future

CGIAR Systemwide Program on Collective Action and Property Rights (CAPRI), International Land Coalition (ILC), Center for International Forestry Research (CIFOR), Foundation for Ecological Security, Oxfam International

Saturday, 5 Dec: 17.15-18.45; Room: 241

Strengthening land and resource rights through REDD+: Policy and practice successes

U.S. Agency for International Development (USAID), Leibniz Centre for Agricultural Landscape Research (ZALF), Center for International Forestry Research (CIFOR), International Institute for Environment and Development (IIED), International Union for Conservation of Nature (IUCN)

Sunday 6 Dec: 9.00-10.30; Room: 253

This Land is Our Land: Gender perspectives on tenure and rights

International Center for Tropical Agriculture (CIAT), CGIAR Research Program on Water, Land and Ecosystems (WLE), International Food Policy Research Institute (IFPRI)

Sunday, 6 Dec: 11.30-13.00; Room: 253



Where are the key knowledge gaps?

- What political conditions are most conducive to forest tenure reform? When does tenure reform increase tenure security? If formalization is not always the best course, what factors contribute to establishing more secure land tenure?
- What is the role of government in increasing land tenure security? How can we resolve longstanding contests between customary and statutory land claims?
- Under what conditions does forest tenure lead to sustainable landscape management? How can carbon rights be clarified? How can participatory mapping and land-use planning be institutionalized?
- What role does gender play in land certification and titling? How can reforms foster gender equity, and vice versa?
- Why are there such significant differences in productivity, income and investment arising from tenure formalization in different parts of the world? And what do these differences mean for the reform process?

Literature

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About this Background Brief

This Background Brief was produced by the organizers of the 2015 Global Landscapes Forum based on input from session hosts and members of the Science Committee. It is not intended to provide an exhaustive analysis of the theme, but to establish key issues, as perceived by those who provided input. Any opinions expressed do not necessarily reflect the views of the organizers of the 2015 Global Landscapes Forum or partner organizations.

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- Tenure and rights
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