



SOCIAL INCLUSION IN CLIMATE FINANCE

# OPPORTUNITY ASSESSMENT TO STRENGTHEN COLLECTIVE LAND TENURE RIGHTS IN FCPF COUNTRIES

## Country Profiles

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WORLD BANK GROUP

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# ABBREVIATIONS AND ACRONYMS

AF	Analytical Framework
CCB projects	Climate, Community and Biodiversity Standards
CFUG	Community Forest User Groups
CSO	Civil Society Organization
DUAT	Direito de Uso e Aproveitamento dos Terras, or ‘the right of land use and benefit of land’
DRC	Democratic Republic of the Congo
EnABLE	Enhancing Access to Benefits while Lowering Emissions
ERP	Emission Reduction Program
ERPA	Emission Reduction Payment Agreement
ERPD	Emission Reduction Program Document
FCPF	Forest Carbon Partnership Facility
FCPF-OA	Forest Carbon Partnership Facility Opportunity Assessment study
FP	Focal Point
FPIC	Free, Prior and Informed Consent
FTAT	Forest Tenure Assessment Tool
GELOSE	Gestion Locale Sécurisée
GLA	Global Land Alliance
IPs	Indigenous Peoples
IPLCs	Indigenous Peoples and Local Communities
LCs	Local Communities
ITRP	Indigenous Territories Recovery Plan
NGO	Non-Governmental Organization
OA	Opportunity Assessment
ODA	Overseas Development Assistance
REDD+	Reducing Emissions from Deforestation and Forest Degradation, forest carbon stock conservation, the sustainable management of forests and enhancement of forest carbon stocks
RECOFTC	Regional Community Forestry Training Center for Asia and the Pacific
RRI	Rights and Resources Initiative
USAID	US Agency for International Development
WB	World Bank

# METHODOLOGY

A more detailed description of the study's methodological approach is included in Annex I. Country Profiles are grouped by region, leading with the expanded “deep-dive” profiles.

**Data Sources** - The Opportunity Assessment study methodology was developed to encompass multiple differentiated data sources that are evidence-based, participatory and operationally relevant.

**Evidence-based:** Triangulation between different types of data sources was critical at every step of the study. Areas of significant divergence were followed up with additional review and inquiry.

**Operationally relevant:** With functionality as a key outcome of the study, the study team remained in close communication with the FCPF Secretariat throughout the study to ensure that the results meet the needs of the FCPF and supporting donors. This included extensive documentation of preliminary findings to inform the FCPF's decision as to “deep-dive” countries and an expansive view of tenure rights as well as related livelihood benefits. This inclusive view encompasses several World Bank resource sectors, including forests, land and rural development/agriculture.

**Consultative and Participatory:** The study team drew from the knowledge and experiences of World Bank staff (global and regional), especially the FCPF Focal Points. This consultative process included preliminary review of country findings and additionally served to build trust in the study results and facilitate timely on-boarding of potential opportunities to existing World Bank projects and programs. The study's broad scope relied on significant qualitative and quantitative inputs from a variety of sources. For the final synthesis of identified recommendations and pathways in each country to be operational and robust it was critical that the reviewed data be validated, usually resulting in an iterative process over a timeframe of several months. This process differed in intensity between countries, as several countries were selected by the FCPF for additional review (i.e., “deep-dive” countries) and country contexts varied

considerably in complexity (i.e., some countries have no collective tenure regime, where others have multiple regimes). An additional factor that was often related to the feasibility of rights advancement is that in some countries the study team was met with far greater engagement and enthusiasm from the FCPF and WB Focal Points and expert informants.

The basic data collection process included:

- 1. High-Level Review:** The study team leveraged data points from the draft High-Level Scan of FCPF countries – conducted independently by RRI – to understand the overall context related to IP and LC rights advancement.
- 2. Desk Review:** A desk review of relevant country documents and literature included:
  - » The status of IP and LC collective land and forest rights for selected countries, from sources such as RRI's Tenure Databases, LandMarks's Legal Security Indicators, Chatham House's Forest Governance Assessments, and PROFOR's Forest Governance Assessments;
  - » Relevant REDD+ country documents and relevant donor project documents, especially country ERPDs, documented evidence of tenure prioritization and multilateral donor forest sector reviews;
  - » Relevant bilateral donor analysis (i.e., USAID's LandLinks country profiles and project reports);
  - » Relevant NGO/CSO reports;
  - » Relevant academic literature; and
  - » Review of the project pipeline in Carbon Fund countries.
- 3. Electronic Survey:** Based on the Analytical Framework a “drill-down” survey was disseminated to over 350 global experts on collective tenure rights, including national CSOs/NGOs, donor/project staff, academics and independent experts. The results of this survey addressed data gaps and inconsistencies and served to increase the pool of informants validating the results of the study. In order to facilitate as much inclusion as possible, the survey was offered in Bahasa, English, French, Lao, Malagasy, Spanish, Nepali and Vietnamese.
- 4. Semi-structured Interviews:** Virtual interviews with key expert informants were conducted to explore information about IP and LC rights recognition and

elucidate potential operational pathways. Interviews began with an overview/context discussion with WB-FCPF FPs in each country (where possible) and were followed up by other country experts. Snowball sampling was utilized to select follow-up interviews.

- 5. Additional “deep-dive” Data Sources** (Ghana, Mozambique, Costa Rica, Guatemala, Indonesia and Vietnam):

- » **Follow-up interviews** directed at key government officials, community and Indigenous organization leaders and other experts;
- » **Validation workshops and external review** in selected countries;
- » **Media-reviews** of the online news media discourse around collective land and forest rights, including disputes and recent conflicts. The GLA study team conducted reviews of media for Ghana, Mozambique, Costa Rica and Guatemala. RECOFTC specialists conducted reviews for Indonesia and Vietnam.
- » **ODA financing review** of selected countries to analyze the scope and scale of recent financing and to identify potential partnerships from multilateral and bilateral official development donors within this forestry, agricultural and rural development sectors.

**Synthesis, Review and Reporting of Results – Country Profiles** - Data collected over the course of this study were analyzed and synthesized into brief country profiles. Country profiles underwent external review by WB FPs in each country, or, in cases where FPs were unavailable, independent experts working in the land and natural resources sectors. The study's six “deep-dive” countries underwent a more exhaustive data collection, analysis, review process. In the case of Ghana, a stakeholder validation workshop was convened in Accra in February 2021. Therefore, the context and opportunities defined in these countries are more detailed and made with an enhanced degree of confidence.

Potential opportunities for IP and LC tenure advancement were tracked from all data sources and iteratively refined and selected over the course of the study. Where possible, stakeholders of specific investment/action/reforms are identified. Many opportunities identified in the country

profiles are expected to have a synergistic effect on overall tenure security and would in many cases ideally be part of concerted projects or program in the relevant jurisdiction. Nevertheless, specific investment/action/reforms aimed at particular opportunities may be able to stand alone. As such, the synthesis of opportunities can be viewed as an overall “opportunity pathway” within a country context where smaller actors (CSOs/NGOs, donors, government institutions) can approach specific identified opportunities (i.e., investments/activities/reforms) and make tangible contributions to collective tenure security.

The country profiles are intended to provide a rapid overview of trends and conditions related to collective rights within each Carbon Fund country and an orientation to potential opportunity spaces and investments/activities/reforms that can lead to IP and LCs’ collective rights recognition and sustained livelihood benefits. The country profiles include:

1. Summary statistics of the extent and nature of collective forest and land rights in the country;
2. FCPF REDD+ advancements and jurisdictions;
3. Collective tenure regimes;
4. Context of collective rights;
5. Synthesis of opportunities to secure collective tenure;
6. Entry points and specific opportunities, including key stakeholders, the estimated scale, location and time-frame of investments;
7. Table briefly detailing the status of land and forest rights organized by key elements of the Analytical Framework;
8. Potential vehicles for tenure-related investments to advance collective rights, as identified from donors and project literature; and,
9. Constraints and/or risks to tenure security within the national context, including the estimated level of impact on the proposed tenure advancement measures and the potential for in-project/program mitigation.

**“Deep-dive” Countries:** Based on a review of OA study data by the FCPF Advisory Panel at the mid-point of this study (November 2020), six countries were selected for additional assessment (two in each region), based on the following criteria:

1. Potential for investment through existing or pipeline project/program “vehicles” in the WB forest, land, or

rural development/agriculture sector portfolios;

2. Value in providing a diversity of learning experiences from the FCPF OA study; and,
3. Potential for immediate and significant gains in IP and LC tenure security.

The country profiles of the six countries selected to further review (“deep-dives”) the following additional components:

1. A brief description of the online news media discourse related to collective tenure and the implications for potential advancement opportunities (see Annex II);
2. Additional context discerned from more diverse stakeholder engagement; and,
3. Brief analysis of recent ODA financing by sector and donor category, and discussion of the implications for operationalizing opportunities to advance collective tenure.

# AFRICA COUNTRY PROFILES





# Deep Dive Country Profile

## GHANA\*

### COMMUNITY FOREST TENURE IN GHANA AT A GLANCE

Total land area under communal ownership (million ha) / % of national territory under communal ownership	>18/ ~ <b>80%</b>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Forestry Commission (FC)</li> <li>» Ministry of Lands and Natural Resources (MLNR)</li> <li>» Ghana Cocoa Board (COCOBOD)</li> <li>» The Lands Commission (LC)</li> <li>» District Forestry Services Division (FSD)</li> <li>» Administrator of Stool Lands</li> </ul>
FCPF REDD+ Jurisdictions:	Program area overlaps with 92 administrative districts and 5 administrative regions, including the Eastern Region, Central Region, Ashanti Region, Western Region and the Brong-Ahafo Region (25% of the national territory)
FCPF REDD+ Advancements:	ERPA signed (June 2019)

### COMMUNITY TENURE CATEGORIES IN GHANA<sup>2,3</sup>

<p><b>Allodial Title:</b> Strongest form of customary land tenure, vested in stools, skins, clans or families that hold land in trust for community; legal title is held by traditional leader. Only indigenous groups can hold allodial titles. Usually in forests reserves or Community Resource Management Areas.</p>	<p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Yes</p> <p><b>Management:</b> Limited, most control is with the Forestry Commission</p> <p><b>Exclusion:</b> Yes</p> <p><b>Alienation:</b> Limited. Traditional authorities have rights to lease, rent or “sell” lands, but these are limited to permissions to use lands, rather than transfers of ownership.</p> <p><b>Due process and Compensation:</b> Presidential expropriation is possible without consultation, consent or advance notification; Rights to appeal only exists for challenging the amount of compensation received from compulsory acquisition.</p> <p><b>Duration:</b> Unlimited</p>
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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Ghana has demonstrated a commitment to democratic governance, economic growth (with its GDP quadrupling since 1990) and significant momentum in its efforts to implement REDD+ investments and activities in recent years. It became the third country in the Carbon Fund to sign an ERPA in 2019.

However, deforestation and poverty for those dependent on natural resources are urgent interlinked concerns for Ghana. Since 2000, there has been a significant increase in deforestation and from 2012-2017, annual deforestation increased to over 520,000 hectares (3.2 percent), placing its forest loss among the highest in Africa. Conversion of forests to agricultural land is the primary driver of deforestation, followed by illegal harvest of wood, population and development pressure and mining. Inefficient processing by the forest products industry results in an estimated half of the annual allowable cut of wood being wasted, pushing timber companies to harvest additional wood to reach targets,<sup>4</sup> contributing to deforestation. In the ER-Program area, cocoa represented 27 percent of the forest area cleared for agriculture, and food crops accounted for another 66%. Areas are typically planted in food crops to provide shade cover for incipient cocoa farms, implying that cocoa cultivation is by far the dominant direct driver of deforestation in the ER-Program area.<sup>5</sup>

Ghana has complex land and resource tenure regimes, a result of rich cultural diversity, historic colonial administration and more recent State legal reforms. The vast majority of lands in Ghana are under customary ownership (78 percent), and lands are governed by a pluralistic governance regime of both customary and statutory laws. Statutory land rights are documented by The Lands Commission, with responsibilities over surveying, valuation and titling.

However, as of 2016, titling could only occur in the region around Accra – all other regions of the country documented transactions with deed registrations.<sup>6</sup> Even if implementation of rights via title registration has been significantly expanded, it may still represent a practical cost and accessibility hurdle for some owners. Customary

lands are owned by stools/skins (chieftaincy structures), families, clans and is held by the chief. Stools/skins hold allodial title, the strongest form of tenure, and can allocate usufruct rights via contracts to groups or individuals within the same group (“usufruct farmers”). A commonly utilized, but weaker, form of tenure is pledged or rented land, with a variety of tenancy agreements between farmers (so-called “stranger farmers”) and landowners. These sharecropping arrangements are referred to as *Abunu* and *Abusa* (referencing 1/2 or 1/3-share that goes to the landowner, respectively). These often undocumented, oral agreements allocate a portion of the farmer’s land/crop to the landowner over a period of time. It is partly due to the often-undocumented nature these transactions that land tenure security is weak and conflicts are common. Customary Land Secretariates, working with the hierarchy of customary land authorities, were supported by the first Land Administration Project (World Bank) to record these customary transactions, their role strengthened and clarified with the recent passage of the Land Bill (2019). This strong customary tenure regime (despite the tenure insecurity for farmers) has allowed smallholder cocoa farming to remain throughout Ghana, versus a consolidation of holdings into larger commercial farms.<sup>7</sup> As a result, this study frames the main opportunities to advance tenure security and benefits in the smallholder cocoa sector, and to a lesser extent in other sectors with tree crops, such as shea butter.

The Ghanaian legal framework separates rights to natural resources from land, thus creating a distinction between rights to trees and lands. In the case of forests, the legal framework further distinguishes between naturally occurring and planted trees. Planted trees are owned and controlled by the landowners/farmers. Economic rights to naturally occurring timber trees (on all lands) are vested in the President and under the management of the Forestry Commission. The State’s ownership of naturally occurring trees is qualified—it only controls the management (though it is not responsible for actual field operations) and has fiduciary responsibility for allocating benefits from the resource. Timber rights are generally attributed via Timber Utilization Contracts (TUC), through which constitutionally-agreed benefits are conferred to the landowners (i.e., stools, families, etc.). TUCs cannot, by law, be issued on farmland, though in reality this occurs. Finan-

## BOX: KEY ENACTMENTS

The legal framework governing resources and land in Ghana is supported by the following key enactments:

- » **Constitution (1992)** – Guarantees collective rights (allodial lands) for stools and skins, separates land and commercial resources and puts management responsibilities with the government and establishes the Forestry Commission.
- » **Concessions Act (1962)** – Defines Forestry Commission rights to manage forest resources.
- » **Land Title Registration Act (1986)** – Supports share-cropping tenancy agreements.
- » **Timber Resources Management Act (1998)** – Economic rights to naturally occurring timber trees are vested in the State.
- » **Land Bill (2019)** – Strengthens customary land secretariats, compensation in cases of compulsory land acquisition (limited review).
- » **The Office of the Administrator of Stool Land Act (1994)** – Establishes government authority acting on behalf of stools.
- » **Wildlife Resources Management Bill (not yet passed)** – expected to provide legal support for CREMAs.

cial benefits are allocated to the landowner (e.g., stools) via the Office of Administrator of Stool Lands (OASL), the financial link between statutory and customary authorities (see figure 1).

While it is illegal to harvest naturally occurring timber trees for economic reasons (without permission from the appropriate government institution), to harvest them for non-economic reasons is straightforward, with a recognition of customary law that enables clearing for agricultural purposes. The informal forestry sector is almost equal to the formal sector in size, and despite the illegality of chain-saw milling, the practice provides most of the wood utilized for the domestic market (84 percent).<sup>8</sup>

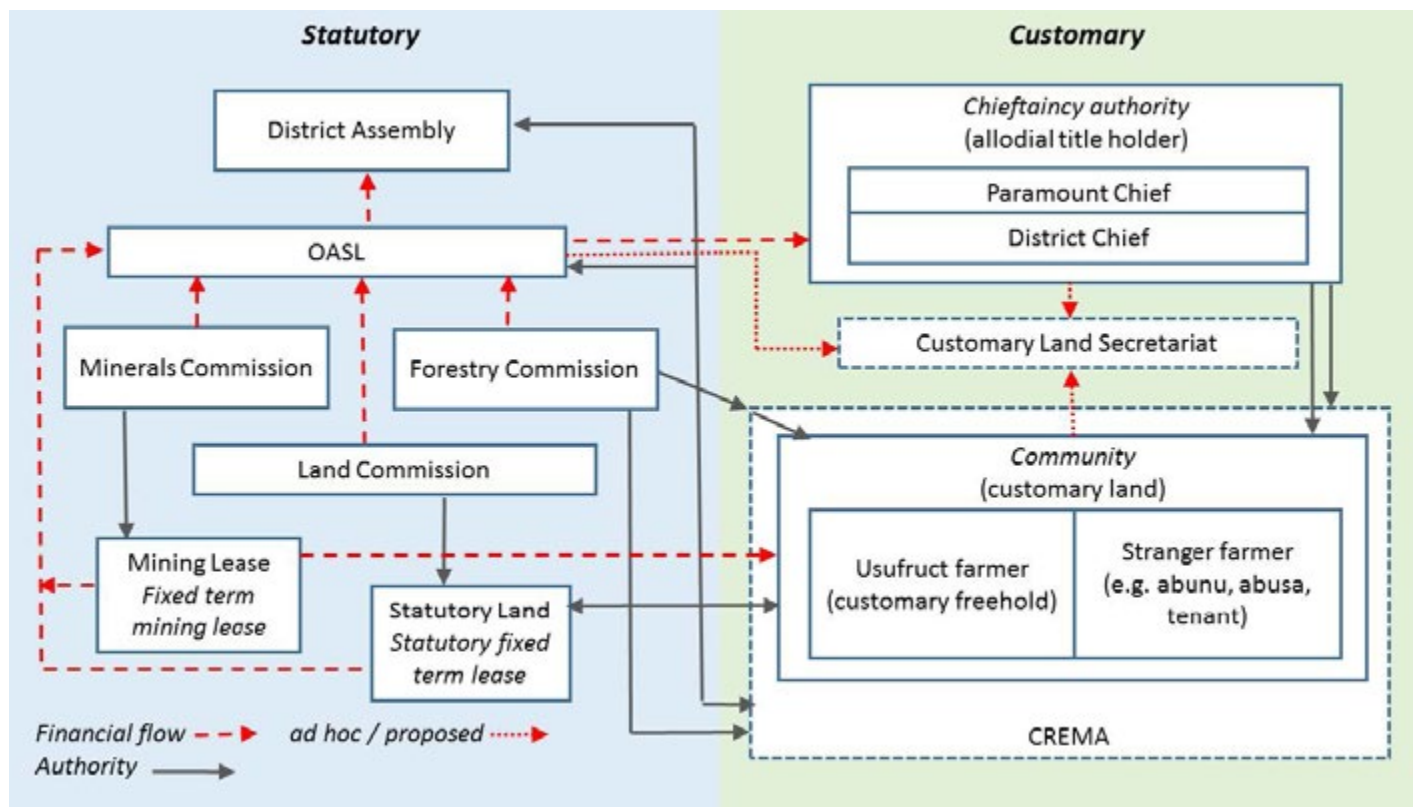
ER-P activities focus on supporting stakeholders in the cocoa industry via upscaling law enforcement, landscape planning and the creation of Hotspot Intervention Areas (HIAs<sup>9</sup>), providing inputs for farmers (i.e., fertilizers, seedlings, tools, etc.), risk management and finance tools, and legal/policy reforms aimed at strengthening tenure and management rights for communities. Ghana is the second largest producer of cocoa in the world. However, productivity is relatively low and represents about half of its potential.<sup>10</sup>

One issue on cocoa lands with major implications on farmer investment and deforestation is that farmers do not possess adequate tree tenure to incentivize long-term management of farms. Under the prevailing *Abunu* arrangement, the landowner might declare the agreement to have

expired and retake control of the land after the crop trees are removed or felled,<sup>11</sup> while the costs of tree removal and replacement can be significant. As a result, some farmers move into forest areas to start new farms, driving deforestation, and leave old farms under limited management (and much lower productivity), versus essentially losing old farms by attempting to rehabilitate them by cutting and replanting the crop trees. An additional issue is related to the tree tenure issues noted above and the lack of incentives for maintaining and fully benefitting from shade trees on their cocoa farms: farmers who want to cut planted trees on their farms must obtain permits from the District Forestry Services Division (FSD), who have the sole power to determine this permission. Further, it can be difficult to distinguish planted from naturally occurring trees and many of farmers have weak tenure over their farms (e.g., “stranger farmers”), incentivizing farmers to avoid planting trees on their farm, and in some cases to destroy saplings.<sup>12</sup> Shade trees are well known to be important for sustainable cocoa yields and to sequester carbon.

Recognizing the relationship between farmer income and investment, climate-change mitigation, farm productivity and tenure insecurity, the ER-P and a number of innovative tree tenure reforms and land use planning pilots/models are underway, including CREMAs<sup>13</sup> (Community Resource Management Areas), tree passport system (IUCN Ghana), and the process of having HIAs (modelled after CREMAs) approved by the Forestry Commission to pilot new arrangements in the ER Program area.

FIGURE 1. LAND AND TREE GOVERNANCE/ADMINISTRATION



Source: Roth, M., Antwi, Y., & O'Sullivan, R. 2017. Land and Natural Resource Governance and Tenure for Enabling Sustainable Cocoa Cultivation in Ghana. Washington, DC: USAID Tenure and Global Climate Change Program. Accessed at [https://www.land-links.org/wp-content/uploads/2017/02/TGCC-Cocoa-tenure-deforestation-assessment\\_Feb-2019.pdf#page=32](https://www.land-links.org/wp-content/uploads/2017/02/TGCC-Cocoa-tenure-deforestation-assessment_Feb-2019.pdf#page=32)

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

There is concern that national political will to resolve customary land issues has diminished in recent years. Although the World Bank's Land Administration Project was authorized for Additional Funding, the government turned down this opportunity and instead pursued a Public-Private Partnership (PPP) to continue work in the sector, putting into doubt future efforts to regularize customary lands. Despite this uncertainty, Ghana has many enabling conditions for the advancement of collective tenure rights:

- » The urgency of resolving tenure issues is salient to the key stakeholders. With one of the highest deforestation rates in Africa, an increasingly threatened environment, and the context of confusion and disfunction over ownership and control of land and forests acting as a disincentive to investment, there

is strong interest across the forest, agriculture and land sectors to seek solutions and dedicate resources. National news media highlights a high context national discourse around land issues<sup>14</sup>, and draws on examples of perceived inappropriate allocations by traditional authorities,<sup>15</sup> compulsory acquisition of allodial lands,<sup>16</sup> cases of land seizure,<sup>17</sup> the litigious nature of land conflicts and challenges of securing land<sup>18</sup> inhibiting investment and the role of the land/tree tenure system in cocoa productivity declines and deforestation.<sup>19,20,21</sup> This discourse also draws attention to the need to improve women's access to land (especially efforts at social inclusion in the recent Land Bill)<sup>22,23</sup> and emphasizes the complexity, contextuality and urgency of resolving land conflicts;

- » The capacity of CSOs and the private sector are very high, with significant initiatives supported by the Ghana Cocoa Board and agricultural companies. The reach of these sectors enables successful

pilots/models (for example the experience of Meridia in the documentation of cocoa farms) to be scaled relatively rapidly;

- » Ghana has ratified a Voluntary Partnership Agreement (VPA) with the European Union, indicating a strong willingness to reform and improve monitoring and enforcement capacity within the government and combat illegal logging, an issue linked to overall tenure insecurity;
- » In the Ghanaian context it is well recognized that the salient issues are multisectoral and involve a broad range of stakeholders. Several advanced initiatives, including the FCPF's efforts, have promoted multi-stakeholder participation through a variety of institutional platforms and build a strong foundation for further investments/activities;
- » Despite some mixed signals, national willingness to advance the environment/forest sectors has been demonstrated as recently as last year, when Ghana was the third country to sign an ERPA; and,
- » Transformations of the cocoa/agroforestry sector hold vast potential for livelihood benefits for rural people, and there are many potential allies in efforts to address the needs of this sector.

The opportunities detailed in this study are ultimately targeted at collective customary land and forests in Ghana. The grave threats of rapid deforestation and livelihood insecurity for farmers both challenge collective lands and individual users alike. However, to focus only on the ultimate ownership level would be to miss the major leverage points and incentives available at the level of the land/forest user. Hence, the proximate targeting of many opportunities is at small-scale cocoa farmers – individuals and families – who hold varying degrees of usufruct rights to parcels within the collectively-owned lands. By strengthening tenure and the realization of benefits for these land users, the associated collective owners and traditional authorities benefit from increased security, decreased conflict and generally more productive, stable landscapes, and communities.

Opportunities to advance and strengthen collective tenure security include investment and support for the implementation of rights and the development of innovative tools (such as Meridia's fit-for-purpose mapping and data management tools) for the rapid documentation of

rights. Paired with this must be a significant investment the capacity of government and customary institutions to implement these practices, including the up-front consultation process. CREMAs and other proven models for natural resource and land governance can be expanded, and investment in dispute resolution mechanisms, including alternative dispute resolution, are enabling conditions for expanded investment in lands and the forest/agriculture sectors and in rural development more generally. Revising rules and regulations around non-industrial forest use, support for institutions to mainstream gender, more inclusive participation, and the documentation and promotion of agroforestry practices most suited to benefiting women, youth and other marginalized groups holds the potential to yield major pro-poor benefits across rural society. Working with and investing in individual farmers and the traditional authorities who hold lands in trust will also yield increased benefits and decrease conflicts.

Opportunities to directly increase benefits for rights holders (including individual farmers and families occupying customary lands) include investment in the security of farm leases and the physical capital of farms. The latter includes supporting a robust extension service capable of supporting farmers with implementing best practices related to climate-safe agroforestry and investment and financial mechanisms for the rehabilitation and renovation of farms to increase productivity and resilience. Any activities here will need to include as a partner the Cocoa Board (COCOBOD), a government institution charged with the international marketing of cocoa and a key stakeholder in the cocoa sector. This study focuses attention on opportunities around smallholder-led cocoa systems vs commercial models of corporate land leasing. Nevertheless, larger commercial models and the private sector create important synergies in many contexts and must not be ignored during project design as a potential modality for creating benefits across communities.

In particular, the private sector is crucial for its potential role in technical support and in farm rehabilitation. One such partnership had Meridia<sup>24</sup> apply a fit-for-purpose approach to map 47,000 farms for Cocoa Life, Mondelēz International's sustainability program, to be able to monitor deforestation, forecast yield and plan interventions. Annex XX details a USAID study's (2017) "ready-to-go"



comprehensive pilot/project intervention on cocoa lands. Given the highly contextual nature of customary land systems and community/land/forest attributes, it must be stressed that any activities related to tree and land rights reforms, rights documentation or cocoa farm rehabilitation must be preceded by proper site selection and advance community assessments (not directly included in the following opportunities) involving traditional authorities and relevant government institutions.

Additionally, an overarching opportunity space that would have broad positive effects on realizing the afore-mentioned opportunities is to directly engage with traditional authorities to facilitate a process to clarify their collective position related to land and resources. As landowners of a majority of the country, traditional authorities are a critically important stakeholder

in the land sector. Facilitating a process to clarify their vision for progress in the land/resource sectors within the National House of Chiefs and/or the ten Regional Houses of Chiefs could take the form of creative dialogue leading to the development of a strategic plan (or white paper) which would stand to inform the government, and civil-society and donor efforts to progress land and resource sectoral reforms and programs. In this way the role of traditional authorities would go far beyond sporadic consultation to a national process leading to a more unified message and direction regarding land matters. As the National House of Chiefs works through a committee system, the existing Natural Resources and Environment Committee could serve as a starting point for developing this national process of engagement to drive change in the land and resource sectors.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>25</sup>	Location of investments	Timeframe of investments <sup>26</sup>
1. Gender and social inclusion investments	<ul style="list-style-type: none"> <li>» Capacity building on gender mainstreaming with CSOs and government officials/institutions.</li> <li>» Document forest and agroforestry practices by women/other social groups that benefit their economic and social security (in the context of land tenure regimes and vulnerabilities), and identify and pilot best practices in order to strengthen benefits and/or tenure arrangements.</li> <li>» Support policies that enable local women, women's organizations and other vulnerable groups to participate in decision-making bodies.</li> </ul>	Women, Youth, elderly, people with disabilities and other vulnerable groups, Migrant farmers, CSOs, Government stakeholders	Moderate	National	Long-term
2. Review and amend laws, rules and regulations governing forest resources	<ul style="list-style-type: none"> <li>» Review regulations (regarding chainsaw milling, etc.) to determine pro-poor impacts and solutions</li> <li>» Review potential tree tenure legal reforms to shift tree management rights from government to landowners</li> <li>» Where appropriate, support policy process to revise laws and regulations to maximize positive impacts on livelihoods and tenure security and to bring legal regulations in line with rural realities</li> </ul>	Government policymakers, officials, and institutions (Forestry Commission), CSOs, farmers, chainsaw-millers, timber industry stakeholders and other stakeholders in forest products value chain	Moderate	National	Medium-term

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>25</sup>	Location of investments	Timeframe of investments <sup>26</sup>
3. Enforcement of rules and regulations governing forest resources	<ul style="list-style-type: none"> <li>» Investment and support for government institutions charged with forest sector enforcement activities</li> <li>» Sensitization of key stakeholders of current regulations</li> <li>» Clearly define and recognize scope and responsibilities of government and traditional authorities (including community) stakeholders in enforcement tasks</li> <li>» To counteract negative impacts on rural livelihoods on increased enforcement of illegal logging, improve benefit sharing to communities from legal harvests and develop alternative sources of locally available forest products (potential sources may include promoting agroforestry production of timber trees and deregulating local processing, and requiring large-scale and commercial enterprises, as basis for issuance of permits/concessions/contracts, to establish woodlots for community use, and introducing cultivation of shea)</li> </ul>	Government officials, and staff, Traditional authorities, CSOs, farmers, chainsaw-millers, timber industry stakeholders and other forest users	Large	National	Long-term
4. Develop procedures for rapid documentation of land and tree rights	<ul style="list-style-type: none"> <li>» Develop formal, user-friendly templates for documenting land and forest rights based on the prevailing tenure arrangements and proposed tenure reforms</li> <li>» Create platform for accessing and viewing land and forest rights documents</li> <li>» Review and amend laws and regulations to accommodate new technologies/innovations (i.e., mobile phones) for documentation of land and tree rights</li> <li>» Consultation and sensitization with communities, traditional authorities, and relevant public land and forest sector agencies to facilitate uptake of innovations</li> <li>» Financing and capacity building support for Customary Land Secretariats to adopt and sustain these technologies/innovations</li> </ul>	Public land sector agencies (Land Commission, Office of Administrator of Stool Lands)/ Customary Land Secretariats, Traditional land authorities/ councils/Chiefs, Forestry Commission, Farmers, CSOs, Private sector	Large	National	Long-term

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>25</sup>	Location of investments	Timeframe of investments <sup>26</sup>
5. Implement decentralized land and tree rights documentation	<ul style="list-style-type: none"> <li>» Building on innovative technology and procedures, support decentralized documentation of arrangements between landlords and tenant farmers to ensure long term benefit for landlords, secure rights for tenants and clarity over benefit sharing</li> <li>» Capacity building and support for Customary Land Secretariats, with sustained technical support</li> <li>» Utilize mediated process, when possible, to document rights</li> <li>» Support individual land boundary demarcations, community boundary demarcations<sup>27</sup> and community land use planning (with community validation)</li> </ul>	Public land sector agencies (Land Commission, Office of Administrator of Stool Lands)/ Customary Land Secretariats, Traditional land authorities/ councils/ Chiefs, Forestry Commission, Farmers, CSOs, Private-sector	Large	National	Long-term
6. Expand successful community-based natural resource management models	<ul style="list-style-type: none"> <li>» Based on successful CREMA and HIA models, expand coverage of models (including others that rely on traditional authorities, District Assemblies or farmer organizations) and encourage community participation and external investment in management, land-use planning and adequate benefit-sharing mechanisms of forests</li> <li>» Capacity building and resources for communities to develop the necessary documentation and governance (i.e., constitution, management board, committees, rules, regulations and district by-laws)</li> <li>» Support legislative backing of CREMAs by fast-track passage of Wildlife Resources Management Bill</li> <li>» Invest in spatial data infrastructure and accessibility to support land-use planning on landscape-scale</li> </ul>	Traditional authorities/ councils and other customary governance actors, farmer organizations, farmers, local government officials/staff, CSOs (i.e., Arocha Ghana, Kasa Initiative, etc.), Timber companies	Large	National	Long-term
7. Support cocoa farm rehabilitation/ renovation	<ul style="list-style-type: none"> <li>» Seek private sector and external partners to pilot financing mechanisms (alongside adequate tenure security) for farmers that allow them to invest in their farms</li> <li>» Support and strengthen farm extension services, to bridge gap between climate change science and practice and to provide long-term support practical research support for farmers</li> <li>» Support multi-stakeholder dialogue with Customary Land Secretariats, CSOs, government officials, traditional authorities and farmers to consider alternative tenancy arrangements to encourage productive investment and security for both farmers and owners</li> </ul>	Cocoa farmers, CSOs, COCOBOD, Government officials, Customary Land Secretariats, Traditional authorities, Government institutions/officials, Timber companies, Universities and research institutions	Large	National	Long-term



Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>25</sup>	Location of investments	Timeframe of investments <sup>26</sup>
8. Support dispute resolution mechanisms	<ul style="list-style-type: none"> <li>» Recognize and build on customary dispute resolution mechanisms, reach agreement with stakeholders on the relevant authorities and legitimate mechanisms of conflict resolution (including existing formal mechanisms); support with trainings and capacity-building</li> <li>» Focus efforts to ensure mechanisms can lead to adequate enforcement of land, tree and farm agreements between stakeholders</li> <li>» Explore pathways to amending Alternative Dispute Resolution Act (or Forestry Commission Act) to cover environmental and forest disputes,<sup>28</sup> building off of REDD+ feedback, grievance and redress mechanisms</li> </ul>	Traditional authorities, District assemblies, Judicial and legal stakeholders, Public land agencies (Land Commission, Office of Administrator of Stool Lands)	Moderate	National	Long-term

## STATUS OF LAND AND FOREST RIGHTS<sup>29</sup>

Key Element of Tenure Security <sup>30</sup>	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	The legal situation is characterized by several perverse incentives that contribute to unsustainable management: it is possible to own a resource but not have full management rights to the trees/forests and highly relevant land-users (farmers) can be excluded from legal rights to trees and benefits despite exercising management responsibilities through day-to-day efforts. In the absence of a comprehensive legislative solution to issues, CREMAs (community resource management area) provide a mechanism to give farmers rights to trees and resources within boundary of CREMA. Many customary rights are held communally and customary lands are held in trust by traditional leaders. Overall, constitutional recognition of customary rights is strong and authorities can grant usage rights, though these rights are in general concentrated in tribal authorities and do not include economic management rights of forests and wildlife. By-laws at the community/district level are weak regarding hunting, bush fires and economic tree harvest. The new Land Bill (2019) expands the rights for customary holders.	2. Review and amend laws, rules and regulations governing forest resources; 4. Develop procedures for rapid documentation of land and tree rights
2. Implementation of legal recognition.	Customary land comprises 78% of the national territory. Formalization of customary rights may be challenging. It is legally possible for two or more people to apply for title, though most family and community land is vested in family heads and tribal authorities. In general, implementation of forest-sector laws, rules and regulations is lagging beyond the legal framework.	5. Implement decentralized land and tree rights documentation; 6. Expand successful community-based natural resource management models
3. Appropriate regulations for land and resource management	Forest management rights are almost wholly retained by the Forestry Commission. To be able to cut down or utilize the planted trees on their farms, the farmers have to obtain permits from District Forestry Services Division (FSD), who have the sole discretionary power to determine whether permission should be granted.	2. Review and amend rules and regulations governing forest resources

Key Element of Tenure Security <sup>30</sup>	Country Findings	Opportunities for policy/action/investment
4. Effective support from responsible government agencies	Land administration is under the National Lands Commission, a development in 2008 which improved coordination within government. Gender representation in government agencies is vastly in favor of men. Government willingness to engage in reforms is apparent after recently passing the Land Bill (2019).	1. Gender and social inclusion investments; 4. Develop procedures for rapid documentation of land and tree rights; 6. Expand successful community-based natural resource management models; 7. Support cocoa farm rehabilitation/renovation
5. Empowered and inclusive Indigenous and community governance	Customary institutions (stools and skins = customary governments; chiefs, traditional authorities, etc.) are strong but receive criticism by some CSOs for vesting too much power in chiefs and family heads who are insufficiently accountability. Lack of participation by women is an issue. Traditional authorities can grant usage rights but lack economic management rights to natural resources.	Gender and social inclusion investments; 6. Expand successful community-based natural resource management models
6. Systems for recording community forest tenure rights	Institutional capacity for monitoring, data storage and management by Forestry Commission is insufficient. Several systems are in place for monitoring related to forest management and enforcement (developed under the EU-VPA). The Administrator of Stool Lands (decentralized office with 30 district-level offices) assists in demarcation of holdings to generated revenue from land vested in customary authorities.	6. Expand successful community-based natural resource management models
7. Enforcement of tenure rights	The SESA identifies law enforcement by Forestry Commission as weak regarding halting illegal farming in Forest Reserves. Enforcement inadequacies are consistently voiced by stakeholders.	3. Enforcement of rules and regulations governing forest resources
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Land allocation by chiefs lacks formal regulation/oversight. State controls mineral, water and timber rights on customary lands. Procedures mention FPIC for areas that are not public or forest reserve lands and the law provides for mechanisms and procedures for managing objections and conflicting interests. Compulsory acquisition does not require consultation/consent/advance notification. Compensation is paid to owners of allodial land, but informal occupants often do not receive payment. Lack of land use planning at the landscape scale contributes to encroachment.	6. Expand successful community-based natural resource management models 8. Support dispute resolution mechanisms
9. Conflict and dispute resolution	Conflicts are common with customary arrangements and mostly resolved by chiefs. Courts are slow in Ghana to resolve land cases. However, the new Land Bill contains provision for alternative dispute resolution in land title registration to replace title adjudication committees. Proposed amendments to the Forestry Commission Act, 1999 (Act 571) and/or Alternative Dispute Resolution Act, 2010 (Act 798) could allow for resolution of environmental/forest disputes via arbitration, mediation and customary arbitration.	Support dispute resolution mechanisms

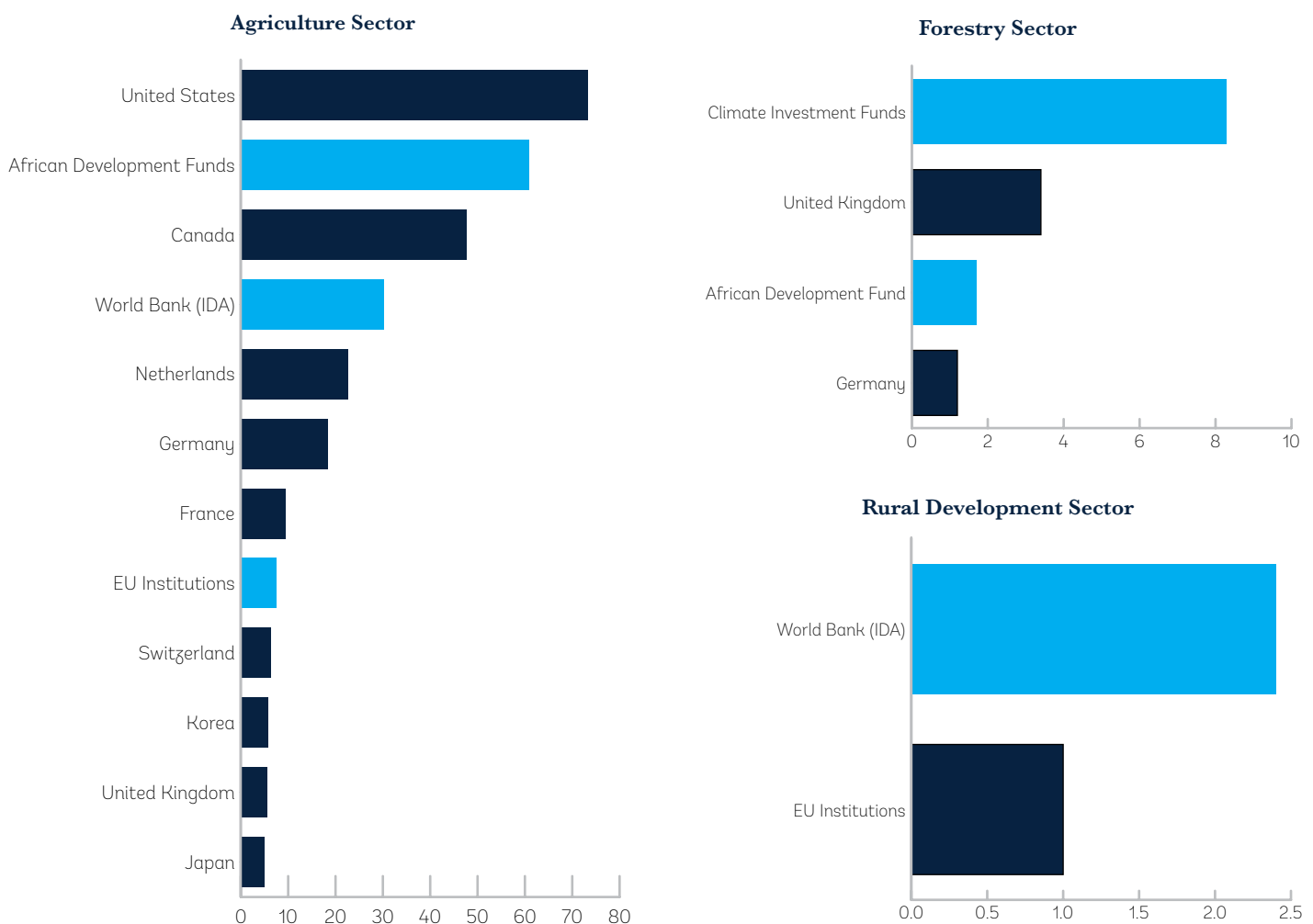
## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>31</sup>

Project Name	Financier	Implementer	Budget (millions, US\$)	Duration
Emissions Reductions Program	WB	Forestry Commission	50.0	-12/2025
Land Administration Phase 2	WB	Ministry of Lands & Natural Resources, Land Commission	35.0	11/2018-NA
Landscape Restoration and Ecosystem Management for Sustainable Food Systems Project	WB (+GEF)	Ministry of Environment, Science, Technology and Innovation (MESTI)	62.8	2020-NA

## OFFICIAL DEVELOPMENT ASSISTANCE (ODA):

### OVERVIEW OF SECTORAL DISBURSEMENTS TO GHANA, 2018-2019<sup>32</sup>

Ghana's ODA flows over the 2018-2019 period indicate that the agricultural sector is by far the most active, with major multilateral and bilateral donors. Given that agriculture is situated at the nexus of farmers, private-sector agribusiness and land/forest tenure insecurity, appropriate investment opportunities and vehicles are likely to be situated within that sector's ODA donors.



*Note:* Values in millions, US\$ disbursements by multilateral agencies and donor countries.

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Customary bias limits women's participation	National	Customary governance may remain resistant to women's empowerment initiatives	Low	Moderate
Legal framework separates land and natural resources tenure	National	High level legal enactments separate ownership of land and natural resources, creating perverse incentives for land managers and complicating efforts to support tenure security	High	Low
Tree tenure reform poses risks to farmers	National	If farmers are unable to prove that trees are theirs, they may stand to lose if tree tenure is formalized	High	Low
Rapid deforestation and urgency of issues	National	The pressing nature of land and resource issues in the cocoa areas of Ghana risk further degrading forest resources and exacerbating conflicts	High	Moderate
Elite capture	National	Efforts to strengthen customary, collective rights may put migrant farmers in a weaker position vis a vis traditional authorities and landowners; failure to reform tenure regimes maintains farmer vulnerability to rent seeking by traditional authorities	Moderate	Moderate
Land markets incentivize alienation of customary land	National	Traditional authorities have significant power to allocate lands – as land markets develop and land prices increase there are increasing incentives to sell outside of the customary lineage, especially in peri-urban and fertile rural areas	Low	Moderate

## Deep Dive Country Profile

# MOZAMBIQUE\*

### COMMUNITY FOREST TENURE IN MOZAMBIQUE AT A GLANCE

Total area where collective rights are recognized (million ha) / % of national territory	20.1/25.5% <sup>33</sup>
Key government institutions for community lands/forests	<ul style="list-style-type: none"> <li>» Ministry of Land and Environment (MTA)</li> <li>» Ministry of Agriculture and Rural Development (MADER)</li> <li>» The National Fund for Sustainable Development (FNDS)</li> <li>» National Directorate for Land and Territorial Development (DNDT)</li> <li>» National Directorate of Forests (DINAF)</li> <li>» National Agency for Environmental Quality Control (AQUA)</li> <li>» Provincial Forestry Services</li> </ul>
FCPF REDD+ Jurisdictions:	9 Districts in Zambezia Province: Gilé, Pebane, Maganjada da Costa, Mocubela, Ilé, Mulevala, Alto Molocué, Mocuba, and Gurué
FCPF REDD+ Advancements:	ERPA signed (January 2019)

### COMMUNITY TENURE CATEGORIES IN MOZAMBIQUE<sup>34</sup>

<b>Certified and Uncertified Community DUATs (Right to Use and Benefit from the Land - <i>Direito de Uso e Aproveitamento da Terra</i>):</b> Rights exercised by customary norms and practices. Do not need to be formalized to exist. Can be formalized with community land delimitation and issuance of certificate by State, or through request for Community Land Title.	<b>RRI Tenure Type:<sup>35</sup> Owned</b> <b>Access:</b> Yes <b>Withdrawal:</b> Yes, subsistence rights; commercial use requires license <b>Management:</b> Limited; community participates in local management council but is not free to manage natural resources within DUATs; must obtain license for commercial use <b>Exclusion:</b> Yes <b>Alienation:</b> No <b>Due Process and Compensation:</b> Yes <b>Duration:</b> Unlimited
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**Zones of Historical and Culture Use and Value:** For the protection of special sites, including rural cemeteries, worship areas, forests with plants and wildlife important for cultural purposes. Implementation is limited by legal deficiencies related to delimitation or geographic area and whether the Forest Act Regulations satisfy requirements of Forest Law.

**Forest Concessions to Communities:** 50-year contracts carried out by individuals, corporations and local communities in productive forests and multiple-use forests. For purpose of commercializing forest products. First concession given to communities was in Zambézia Province.

**RRI Tenure Type: Designated**

**Access:** Yes, even without declaration

**Withdrawal:** Limited, subsistence rights to NTFPs and timber, limited by statutory law, even without declaration

**Management:** Yes

**Exclusion:** No

**Alienation:** No

**Due Process and Compensation:** No, the State has the power to create and extinguish protected zones.

**Duration:** For as long as protected area exists

**RRI Tenure Type: Designated**

**Access:** Yes

**Withdrawal:** Yes, with approved management plan

**Management:** Yes, under conditions of approved management plan

**Exclusion:** Yes

**Alienation:** Limited, with authorization rights can be leased or sold

**Due Process and Compensation:** Subject to contract law

**Duration:** 50 years, renewable for another 50 years

## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Mozambique has a high level of forest cover, covering more than 50 percent of the country's land area. Demographic pressure and other demands on land resources have led to competition for land access between rural communities and conflicts between communities and private investors. Mozambique was one of the first countries to sign an ERPA with the Carbon Fund last year, signaling its commitment to reducing deforestation and forest degradation. The country has already generated emission reductions which are currently undergoing verification and will lead to payments in 2021. Deforestation in the Emission Reduction Program Area (Zambézia Province) is largely driven by small-scale shifting agriculture, an age-old practice that is well-adapted to the infertile soils of the region but requires significant continuous new land to bring under cultivation. Deforestation is driven to a lesser extent by forest-sector activities (including illegal logging).

The deforestation rate has been climbing in recent years, with the majority of the population involved in agriculture and forests; 91.1 percent of the economically active population in Zambézia works in the agricultural sector. As a result, the ER-Program ("ZILMP"), coordinating

with four other World Bank programs (MozBio, MozFIP, MozDGM and *Sustenta*), aims to address the underlying conditions that drive deforestation – which include socio-economic conditions, high-dependence of forest resources and tenure insecurity – by focusing on efforts at improving livelihoods and promoting sedentary and sustainable agriculture, forest law enforcement, strengthening community governance, and tenure security.

In Mozambique's land law, the state is the ultimate owner of all lands and natural resources, but the legal framework recognizes the rights of rural communities established through customary occupation and enables them to formalize and register these rights through a community use-right (DUAT), which allows for the legal recognition of community-based organizations and land-use planning approaches, among other processes. Community land registration has not been carried out in a widespread manner to date, yet some private investors have been granted leasehold titles for land development and natural resource exploitation without strong safeguards and procedures for consultation for affected communities, raising concerns that some community right may be ignored or lost. Formalized use rights make local community rights visible to outsiders and may strengthen a community's negotiation position with external investors. However, the sustained political will to

support these processes from national planning to local implementation was questioned by a number of informants from civil society. Technical demands and the transaction costs of obtaining commercial licenses for natural resource exploitation are significant, and often require the support of local service providers to complete the necessary documentation. While consultations with communities are required for any potential concession or collaborative agreement with communities, few have the necessary capacities and/or information needed to effectively negotiate, or even participate. As a result, consultations are often cursory, and because of non-compliance with management plans, conflicts between communities and companies are common.

Local communities<sup>36</sup> utilize different ethnic customary land use systems and, from the legal perspective, are functionally similar in that by occupying an area, they hold rights called DUATs (*Direito de Uso e Aproveitamento da Terra*). DUATs are use-rights for individuals or communities. Ownership of land and resources on land occupied by DUAT holders is with the State. According to law, DUATs notionally exist whether or not they have been formally recognized. DUATs for communities can be formalized by issuance of either a land delimitation certificate or by a community land title by the government.

The process of delineating DUATs in the Land Law refers to the identification of the spatial dimension of use-rights. Community delimitations (see below for more discussion

on the DELCOM/RDUAT methodology for registering delimitations) have been the focus of donor-supported rural development projects and initiatives for many years (early examples were DFID's Zambézia Agricultural Development Program and the Community Land Initiative (iTC), which continues to support communities<sup>37</sup>) and are significant components of the current World Bank programs (i.e., MozFIP and *Sustenta*), although many bilateral donors have shifted focus away from the land sector in the country (toward COVID and private sector involvement). As of late 2016, 23 percent of country was delimited,<sup>38</sup> though the present number is surely significantly higher after several years of intensive donor-supported activity. Expert interviewees estimate that around 1600 communities have utilized the legal framework to formalize DUATs. The initial delimitations were very large in area, in the range of 40,000-60,000 hectares. This was likely a result of misunderstanding of the spatial extent of communities (e.g., defining them based on a concept of the range of high-level traditional authorities). Currently more DUATs are issued in the range of 1,500-3,000 hectares, a more realistic scale in terms of land administration and management. In practice, the issuance of actual titles of formalized DUATs, which rely on demarcation, have mostly been limited to projects focused on producer associations.<sup>39</sup>

The delimitation process has historically had several different methodologies (reflecting the donor and NGO support for this procedure, as all delimitations have been funded

### BOX: KEY LEGISLATIVE ENACTMENTS AND POLICY PROCESSES SUPPORTING LOCAL COMMUNITY RIGHTS TO LAND AND NATURAL RESOURCES

**Constitution (2004)** – States that land is property of State, but DUAT's can secure use-rights

**Policy for Development of the Forestry and Wildlife Sector (1997)** – Supports CBNRM

**Forests and Wildlife Law (1999)** – Supports community participation in NRM

**Forest and Wildlife Regulations (2002) & Ministerial Diploma (2005)** – Creates and regulates '20 percent' mechanism where part of revenues from commercial forestry and wildlife activities is allocated to communities.

**Land Law (1997)** – Establishes DUATs and allows communities to hold collective DUATs. Defines how local communities acquire rights through customary occupation. Mandates community consultation.

**Law No. 16 (2014)**: Establishes the basic principles and rules on the protection, conservation, and sustainable use of biological diversity within conservation areas.

**Land Law revision (ongoing)**

**Forestry Law revision (ongoing)**

**National Land Policy review process (ongoing)**



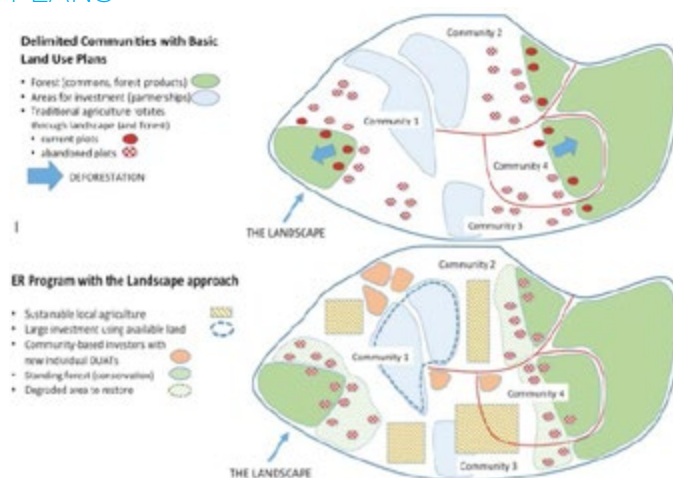
externally from the communities; World Bank-supported activities utilize a consistent methodology), but usually includes development of community land use plans and strengthening community-based organizations (CBOs) such as Community Natural Resources Management Committees (CGRNs). Importantly, the process serves as an opportunity for a community to develop a vision for development and land use activities and is important for later involvement with external investors or the government.<sup>40</sup> This improved capacity and community land use planning process (including extensive community participation and consultation) can ideally enable communities to strengthen their position to work with external investors and enterprises.

There is no “free” land in Mozambique – all community areas have contiguous, historically-based boundaries. Thus, in some sense, virtually all land can be considered to be “community land” (including individual DUATs), with many overlapping private and formal interests. Communities have subsistence rights to natural resources,<sup>41</sup> but commercial rights require approval (via licenses) from the state. Obtaining commercial use-rights is challenging for communities due to a lack of community capacity and resources.<sup>42</sup> As a result, support from NGOs is usually a crucial element for communities to move from subsistence to commercial exploitation of natural resources. The legal framework enables the negotiated access of community lands and natural resources by outsiders. However, communities have not consistently benefitted from their natural resource rights, regardless of whether they hold formally recognized or unrecognized DUATs.

One mechanism for communities to benefit from natural resources on lands they control is the “20 percent” scheme, where the state distributes 20 percent of state revenues from commercial forest and wildlife exploitation to communities where the resources are located. However, this mechanism has not always served communities due to ad hoc and uncoordinated implementation.<sup>43</sup> Communities may lack the capacity to manage both funds and the relationships with the state and resource management operators.

Similarly, private-sector-led productive investments have not been a certain path to improved livelihoods or ten-

FIGURE: EXAMPLE COMMUNITY LAND USE PLANS



Source: Turner, C. 2017. Land Tenure Assessment for the ER-PD. Etc Terra. Accessed at [https://www.nitidae.org/files/2cf-f0a61/land\\_tenure\\_assessment\\_zilmp\\_final\\_report.pdf](https://www.nitidae.org/files/2cf-f0a61/land_tenure_assessment_zilmp_final_report.pdf)

ure security. While consultations with outside actors are required under the law, adequate consultation has been difficult to achieve in practice, as many communities have insufficient governance capacities. Conflicts arise between investors and communities as a result of inadequate consultation, such as by limiting it to just the traditional authorities.<sup>44</sup> Indeed, elite capture is reportedly widespread in such consultations. The legal consequences for investors/concessionaires that do not carry out adequate consultations with communities may be less a threat than the reputational risks and operational challenges brought on by conflicts with communities.<sup>45</sup> From this perspective, community land delimitations, community land use plans and capable CBOs – all of which contribute to a strong consultation process – can be viewed as enabling conditions, however imperfect in practice, for private investment that can benefit communities. Another key aspect of community governance highlighted by experts is the need for communities to incorporate as a legal entity that allows them to hold proof of land and resource rights on behalf of the group and lead negotiations for private-sector investments (i.e., such as common property associations via Law 4/91 on the creation of associations).

Cognizant of these challenges, several government initiatives are underway to reform the legal framework pertaining to land. In early 2020 the government approved Ministerial Decree 2/2020, which establishes the Methodology



FIGURE: VARIATIONS IN COMPANY CONSULTATIONS WITH COMMUNITIES IN MOZAMBIQUE



Source: WRI. 2017. The Scramble for Land Rights. Accessed at <https://files.wri.org/s3fs-public/scramble-land-rights.pdf>

of Delimitation, Registration and Regularization of Areas occupied by communities and individuals (DELCOM/RDUAT methodology). This methodology includes preparing project activities (culminating in the consent of the communities), introduction/synchronization of data in SiGIT (cadaster by DNDT), verification of data, compliance with legal requirements and standards established by the methodology and the issuance of the delimitation certificate and/or DUAT titles. Additionally, the government is currently conducting a National Land Policy (PNT in Portuguese) review (supported by the World Bank *Terra Segura* Program). The PNT review is a recognition that the current land rights regime has not comprehensively fulfilled the needs of the country's development path, in part because it does not encourage investment and exploitation of land and natural resources, and in part because of perceptions that the DUAT lacks sufficient power, flexibility and security to support all the situations for which formalized rights are required. The PNT review will maintain the fundamental relationships related to land, whereby the state is the owner but the citizenry has guaranteed access, use, and is expected to contribute (though there are concerns about transparency in the process) to revising the legal framework to support community rights and benefits. The PNT review process is expected address issues related to:<sup>46</sup> DUAT transferability, community legal representation, joint titling, SiGIT (land information system) interoperability, and Partial Protection Zones.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

The Government of Mozambique has shown a willingness to advance land and natural resource policies by car-

rying out a review of the National Land Policy and by the ongoing revision of the Forestry Law, which will be submitted to Parliament for review in 2021, among other recent processes contributing to legal reform. Though broadly promising, the NLP process calls for careful monitoring and widespread participation because as much as the process can support strengthening the community tenure regime, it also carries a risk of serving to roll back important advances.

The recent reorganization of ministries involved in land and natural resources (MTA and MADER) opens new opportunities for integrated approaches and cross-sectoral coordination. Further, the government intends to revise Law 16 (2014) on biodiversity conservation and related Ministerial Diplomas to detail a process for communities. In sum, these changes are intended to make the legal framework supporting community rights more practical and implementable. Despite these gains, government capacity to support communities is limited. Lower-level government institutional technical capacity (for example, forestry and agricultural extension services), crucial for both rural development and the strengthening of community tenure security (such as by explaining community legal rights) and the realization of benefits, are underdeveloped.

Within the World Bank's expansive country portfolio, significant efforts are underway to advance community land and natural resources rights in Mozambique. The MozFIP project has initially focusing on forest areas for its community delimitations (152 delimited communities, as of March 2021)<sup>47</sup> and other elements of integrated landscape management. Additionally, this project has worked on enabling conditions for sustainable forest management, including improving forest law enforcement (via AQUA)

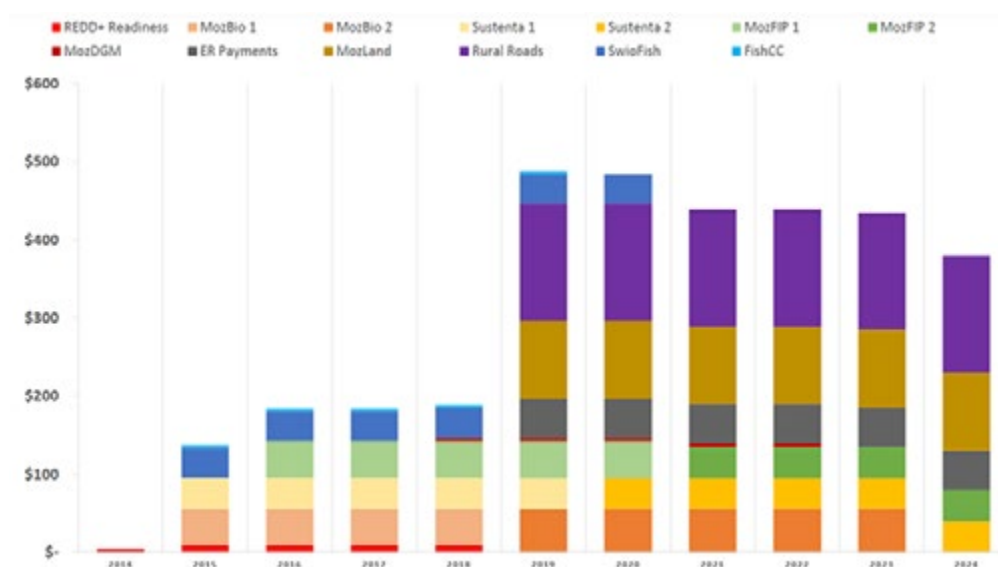
and efforts at supporting the revision of forest laws and regulations. MozLand (Mozambique Land Administration Program), the World Bank's program supporting the government's Terra Segura program, aims to improve community and individual land rights with the goal registering 5 million land parcels. Given this ambitious goal, it is highly likely that a vast majority of the program will focus on individual parcels. Individual DUATs have the drawback that, upon inheritance, updating names may be challenging given the poor prospects for a well-functioning cadastral office in one or two decades. Indeed, this unsustainability of updating the registry might represent a real threat to the country's land administration system in the long-term. Nevertheless, community delimitations through these World Bank programs are an excellent opportunity to integrate the associated tasks (i.e., delimitation, land use planning, community governance) with broader rural development initiatives in the country, so that delimitations serve not just to secure rights against external threats but to promote and facilitate development and outside investment. Along these lines, the World Bank's Dedicated Grant Mechanism (MozDGM) is supporting communities to participate in community-based natural resource management and policy-making oppor-

tunities, including financial and technical support to community-based organization-led projects.

The highest priority opportunity for external donors is to support efforts to improve community governance and natural resources management capacity. This opportunity space is effectively most of Mozambique, as most sources indicate that community governance and benefits from land/resources are generally insufficient. This will serve to strengthen tenure security and leverage existing rights to allow communities to obtain tangible economic and social benefits from their land and resources. It is only with strong communities that productive partnerships with private sector interests can be promoted where there is potential for communities to benefit.

To support strengthening community governance across Mozambique, the CBNRM-Network (a national non-profit) has recently published a detailed guide to establishing community governance systems.<sup>48</sup> Success in community governance and community natural resource management supports communities as well as sends a strong positive signal to the government that community rights are worth prioritizing over individual rights – critical given the role of government in implementing ongoing World Bank program/projects.

FIGURE: MOZAMBIQUE'S INTEGRATED LANDSCAPE MANAGEMENT PORTFOLIO FROM THE WORLD BANK)



Source: Accessed at <https://www.worldbank.org/en/programs/mozambiques-integrated-for-est-and-landscape-management-portfolio>

Improving community governance includes formation of a legal entity to represent the community. As a legal entity, experience throughout the country has suggested that community associations (enabled by Law 4/91) must be able to:

1. Represent the community as a whole and define who makes decisions regarding the management of resources;
2. Manage the finances of the community, including opening bank accounts; and,
3. Lead negotiations for private sector external investments.

Investments to support community governance, to be able to support community-based natural resources management (CBNRM) and bring equitable benefits to the entire community, must be conscious that efforts do not lead to elite capture and reproduce local inequality. These deficiencies act to limit community motivation to maintain the ongoing burden of institutional maintenance. This points to the important need for communities to strengthen their organizational capacity, which includes drafting internal rules and statutes, managing financial transactions and accounts, among many other things. CSOs/NGOs are the obvious partners to communities in this effort, supported by external donor investment and resources. Experts have emphasized that CSOs/NGOs – despite, and perhaps because of – their importance, need a sustainable exit-strategy from communities to ensure that local decision-making and enterprise development efforts to do not disappear when external resources are withdrawn. In many cases, some level of external support may be needed over the long-term. But, as much as possible, initiatives to strengthen community governance should aim to build durable capacity.

A linked concern is the immediate need for community financial resources. Sustainable exploitation of natural resources often has a long lead-time until reliable revenue streams are realized. In the meantime, in order to support the expanded community institutional capacity needed for sustainable resource governance, participation and decision-making, external donors may need to act as bridge financiers in some form to communities, likely through a grant-based mechanism.

Strong capacity of community institutions is a necessary condition for community-based natural resources management. Communities have customary rights to forest resources, but the government exerts control over the commercial exploitation of these resources by issuing licenses for commercial forest exploitation to forestry operators and by assigning forest concessions areas. In this process, the government is required to carry out consultations with the community. It is in this relationship that many previous community-investor projects created conflict or failed to bring benefits to the community as a whole. Communities require strong, accountable governance to ensure that in consultations they adequately express their clarified vision and needs, and ensure that benefits are fairly distributed

so the investment is perceived as fair and legitimate across the community. Communities also require some measure of technical capacity to understand, clarify and advocate for specific forest management practices that are acceptable to their members. This process involves clarifying the values and customary practices of communities, as well as an understanding of methods and impacts of concessionaires and forestry operators. NGOs/CSOs may be able to provide some technical forest management advice, but a larger role must be taken by local government institutions. Part of the government's role must be to strengthen decentralized institutions (i.e., District Forestry Services) to provide long-term technical support for communities and integrate community-based natural resource management into their development strategies. External donor resources for government institutions can also be put toward building out this local technical capacity, as well as an improved consultation process. Extension services by local government offices could be a valuable counterpart to communities looking to explore forest management modalities and access critical technical support for agricultural activities such as fire management, climate-smart agriculture, and beekeeping.

Another opportunity limited to strategic contexts is the strengthening of community rights via a comprehensive approach including the formation of legal entities, delimitations and land use plans that lead to formalized DUATs and allow communities to negotiate with investors. Government is tasked with completing registration and issuing certificates of delimitation, but donor-funded activities occupy a critical gap in that they are able to support the upfront work of NGOs and local service providers to carry out delimitations and land use planning. In large part, the formalization of DUATs is a strengthening of community rights to land and resources, as those rights already exist within law. But the formalization process makes these rights visible to outside interests, which logically should reduce conflicts and, along with strong community governance, create win-win investment opportunities. At this stage of formalization across the country, delimitations must be carried out more strategically. Delimitations should be prioritized where communities request them and where conflicts are likely to occur or have occurred. An early stage of any delimitation program must be ensuring that communities have sufficient governance capacity.

In the absence of this community institutional capacity, experience with delimitation has shown that it often does not lead to community benefits.

As another crucial early step of the delimitation process, community land use plans must be created. They can usefully serve as a de facto precursor to the consultation process for forestry licensing and concessions, in that they give community members an opportunity to spatially organize their needs and practices and work through ideas about the common interests of the community. The CaVaTeCo process (short for Community Land Value Chain in Portuguese), as carried out by ORAM and Terra Firma, is a proven platform for strengthening community rights via the following main stages:<sup>49</sup>

1. Establishing legal entity to represent the community;
2. Delimit community;
3. Develop cadastral block;
4. Delimit family parcels within community;
5. Develop community land use plan;
6. Establish and main community cadaster; and,
7. Negotiate with investors.

In a positive development, World Bank programs/projects are pairing delimitations with broader rural development initiatives. This ensures that investments and resources (both community and external) put toward community governance and capacity translate into tangible benefits for the community, a critical component of durable tenure security.

One specific site where some of these opportunities may have potential is in the Green Resources concessions in Northern Mozambique. An effort is underway to return rights to communities from the forestry company (via delimitations and other procedures) including rights to teak and other commercial timber plantation areas and intact Miombo forests with potential for tourism. Further investment, including in local resource management and community governance capacities, along with technical capacities and support, could enable this opportunity to advance rights to yield meaningful, long-term, sustainable livelihood benefits for communities.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>50</sup>	Location of investments	Timeframe of investments <sup>51</sup>
Strengthen community legal formation, capacity and governance	<ul style="list-style-type: none"> <li>» Support community legal incorporation (i.e., community associations) in order to hold assets and manage on behalf of the community.</li> <li>» Support durable community business and financial skills and capacities (including community financial tools/bank account).</li> <li>» Support community governance, including mechanisms for defined, legitimate representation to facilitate consultative processes, organizational skills (i.e., how to run meetings, draft statutes, etc.) and to carry out equitable benefit sharing</li> <li>» Disseminate training packages to CSOs to expand reach of their efforts to support communities.</li> <li>» Support community capacities to discuss, clarify and decide on appropriate forest management modalities.</li> </ul>	Communities (represented by community associations); CSOs/NGOs	Large	National	Medium and Long-term

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>50</sup>	Location of investments	Timeframe of investments <sup>51</sup>
Formalize rights by implementing community land use plans and land delimitations	<ul style="list-style-type: none"> <li>» Support NGOs to implement community land use plans as a input for community consultation process and a potential input into larger-level planning processes (district-level land use planning), where needed/applicable.</li> <li>» Delimitations and land use plans should be focused where there are other integrated rural development investments, conflicts or where communities request them.</li> <li>» Support appropriate dispute resolution processes (incl. paralegals and other mechanisms/agents) as conflicts arise during formalization process.</li> </ul>	CSOs/NGOs (i.e., ORAM) Local technical service providers Communities and local community institutions Paralegals and dispute resolution stakeholders	Large	National	Medium and Long-term
Support local/district government capacities to support communities	<ul style="list-style-type: none"> <li>» Capacity building with government institutions improve technical support capacity to communities, especially related to technical forest management and agricultural extension services.</li> <li>» Support government to implement management plans and facilitate and monitor private interest-community partnerships for the benefit of communities.</li> </ul>	Local and provincial government (District Forestry Services, local agricultural extension offices), Private sector operators and concessionaires, Communities and local community institutions	Large	National	Medium and Long-term

## STATUS OF LAND AND FOREST RIGHTS<sup>52</sup>

Key Element of Tenure Security <sup>53</sup>	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	Legal framework is progressive and recognizes and protects customary rights via DUATs. While the State owns all land and natural resources (including carbon), it allocates considerable use and development rights as per national legislation. Rights acquired by occupation (including customary rights) are formally recognized in law. All rights obtained in other ways enjoy similar legal protections - the legal framework is harmonized in this respect. Ministerial Diploma 2/2020 includes land use plans as necessarily instrument in the context of community delimitations. Women have constitutional equal protection and legal affirmation of property rights, though gender-sensitive protections for women's community forest rights are sparse, despite recognition for women's membership and inheritance rights within Uncertified and Certified Community DUATs. <sup>54</sup>	Use National Land Policy for review of DUAT transferability, community legal representation, joint titling, SiGIT (land information system) interoperability, and Partial Protection Zones
2. Implementation of legal recognition.	Implementation of legal rights to collective land is insufficient – most DUATs in the ER-P (collective and individual) do not have any kind of documentation attached to them and limited community consultations and decision-making may mean that communities do not effectively have a say in projects on lands they supposedly control. The key distinction between customary and private rights is how they are obtained (DUAT via occupation vs DUAT via “good faith” occupation or formal application). RRI estimates that an additional 10m ha (12.7% of national territory) are unrecognized. <sup>55</sup>	Implement community land use plans and land delimitations

Key Element of Tenure Security <sup>53</sup>	Country Findings	Opportunities for policy/action/investment
3. Appropriate regulations for land and resource management	Licenses and state approval are required for the commercial exploitation of NRs and forests. Communities often do not have adequate capacity, documentation and resources for this process and may require support of NGOs to navigate the process.	Development of community capacity to get licenses approved (via partnerships with NGOs)
4. Effective support from responsible government agencies	Recent political will has been demonstrated in consolidation land and resource institutions within the MTA and FNDS and the creation of DINAF within the MTA. However, there is generally low institutional capacity, especially in critical areas such as extension staff. This lack of capacity to support communities is often apparent when NGO support for community projects runs out. The decentralization process is ongoing, and while there have been setbacks, the process may offer opportunities to increase rural capacity and support for communities. There are issues with inter-institutional coordination and coordination between different levels of institutions (i.e., large projects may send required studies to ministries and provincial directorates may lack access). Decision making between levels of government may be opaque.	Support local/district government capacities to support communities
5. Empowered and inclusive indigenous and community governance	Community representation and governance related to DUATs and the registration/demarcation process takes many forms, as different projects and legal instruments lead to different names of bodies. Community capacity is often insufficient for NRM, governance and even consultations as currently conducted, and the focus of external efforts is often not on active management and economic development. Communities often have low capacity for participation, resource management and decision making. Relatively widespread elite capture by traditional authorities at the local level is reported.	Strengthen community legal recognition, capacity and governance
6. Systems for recording community forest tenure rights	A cadaster exists in the MTA (SiGIT in the DNDT) and Legal Registry in the Ministry of Justice. However, access to cadastral information is generally limited. DINAF is working on a Forestry Information Service (SIF) which will enable sharing of information related to forest management. The cadaster system is reportedly largely non-functional and has been replaced in practice with a previous analog system due to an inability to maintain software licenses, <sup>56</sup> and there are interoperability issues in SIF. Lack of data sharing contributes to overlap between some community DUATs and mineral rights.	
7. Enforcement of tenure rights	Non-compliance with management plans in concession and simple license areas and illegal logging are major causes of forest degradation. Forest operators do not necessarily follow management plans and some operators reportedly work illegally to avoid paying taxes to government. The state's capacity to enforce forest sector laws and regulations has made progress but in some areas is insufficient, including the inspections regime. To support enforcement, the state has created AQUA, an independent inspection agency that is separate from the licensing process. AQUA has been implemented at the provincial level in many provinces. Soon, forestry licensing will be accessible through the SIF system. The ban on export of unprocessed wood was not effective, as it led to minimal processing (and resultant waste) in order to access the export market in the absence of parallel investments in processing.	Support AQUA initiative for independent inspections and make forestry licensing accessible through SIF system.



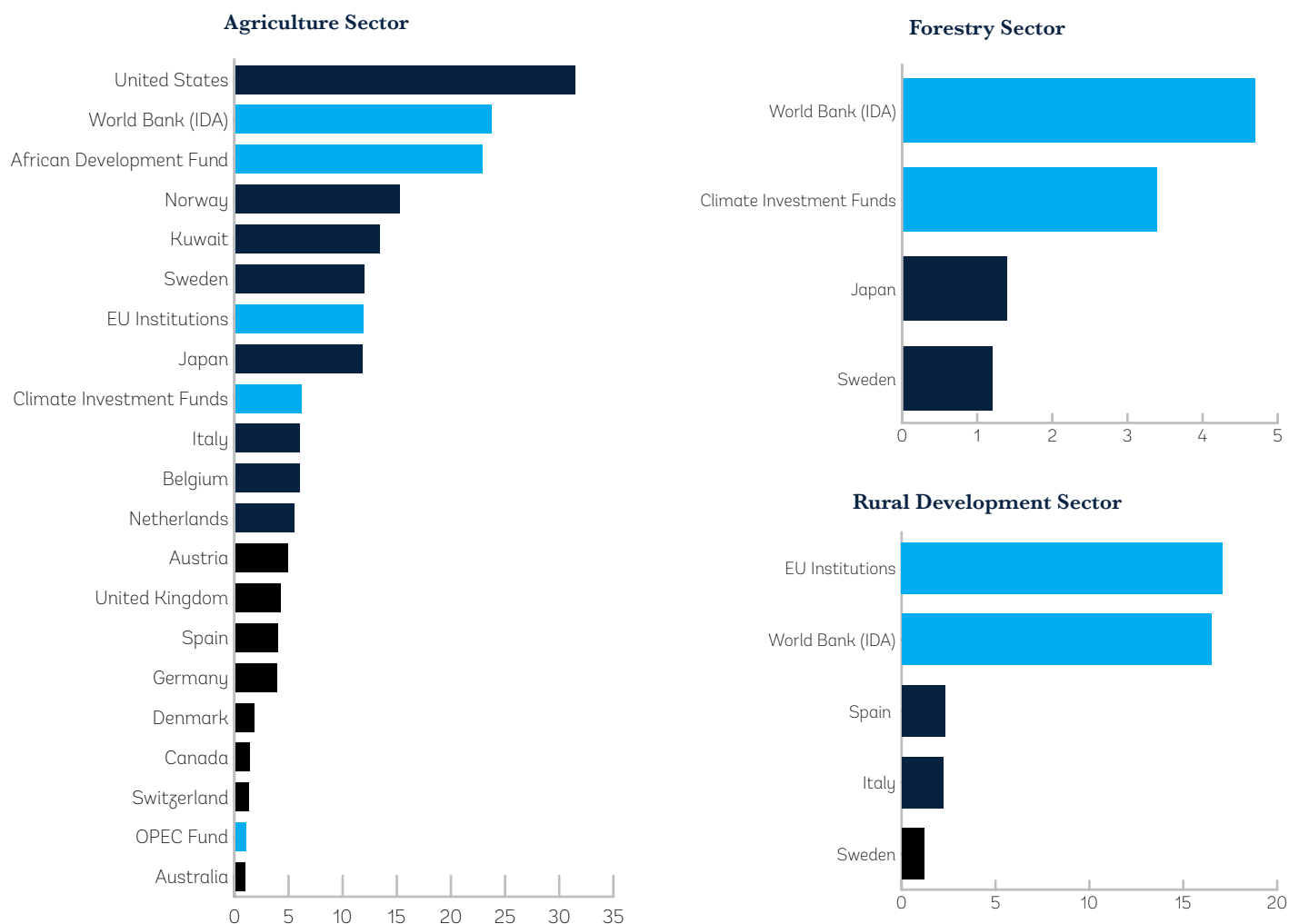
Key Element of Tenure Security <sup>53</sup>	Country Findings	Opportunities for policy/ action/investment
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Some degree of overlap between community DUATs and resource rights (e.g., mineral rights) may occur, without community knowledge. Safeguards from the many ongoing WB projects are being included in the national legal framework (including National Forestry Policy and Forestry Law revision). While consultation are mandatory, communities often lack sufficient capacity to participate effectively in them and to negotiate directly with investors. Since the passage of the Land Law (1997), there have been several examples of community consultations that were perceived as inadequate by communities. Communities often do not benefit, despite legal mandates, from forestry and enforcement activities.	Strengthen community legal recognition, capacity and governance to resolve overlapping rights and conflicts; and, Implement community land use plans and land delimitations.
9. Conflict and dispute resolution	Customary mechanisms are able to resolve most conflicts within communities. Conflicts between communities and external stakeholders often utilize the formal legal framework, but when doing so, communities may need support as court costs can limit their participation. While there is a mechanism for communities if they cannot afford to participate (Poverty Certificate), there might be a conflict of interest in the case of a conflict involving the government, as it is the body that issues this Certificate. In some conflicts, the investor wins because the community does not have representation at the judicial level.	Support community legal representation in land/resource courts cases.

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>57</sup>

Project Name	Financier	Implementer	Budget (millions, US\$)	Duration
2nd Phase Conservation Areas for Biodiversity & Development – Additional Financing (MOZBIO)	WB	Min Ag. & RD/ National SD Fund	28.6	08/2020 - NA
Additional Financing to the Agriculture and Natural Resources Landscape Management Project (Susenta)	WB	Min. Land, Env. & RD	60	7/2019 – NA
Zambézia Emissions Reductions Payment	WB	Min Ag. & RD/ National SD Fund	50	2/2019 – 12/2025
Land Administration (Terra Segura)	WB	Min. Land, Env. & RD	100	2019-2024
2nd Phase Conservation Areas for Biodiversity & Development	WB	Min Ag. & RD/ National SD Fund	45	9/2018 – 11/2023
DGM for Local Communities (MOZDGM)	WB		4.5	2018-2022

## OFFICIAL DEVELOPMENT ASSISTANCE (ODA): OVERVIEW OF SECTORAL DISBURSEMENTS TO MOZAMBIQUE, 2018-2019<sup>58</sup>

ODA assistance to Mozambique over the 2018-2019 period was led by multilateral donors across the forestry and rural development sectors, and by the United States in the agriculture sector. As highlighted above in the potential vehicles for tenure-related investments table and the above figure on World Bank investments, there are many ongoing projects which, at least for the next few years, provide opportunities to direct investment at local community rights advancement, consolidation, and the realization of benefits from land and forests.



*Note:* Values in millions, US\$ disbursements by multilateral agencies and donor countries.



## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Elite capture	National	Traditional authorities may face incentives from outside interests to act outside of the community's interests.	Moderate	High
Persistent conflict from private-community partnerships	National	Conflicts resulting from misunderstandings and failed expectations are likely to remain to some level, despite efforts to improve community participation	Moderate	High
Delimitation increases land conflicts	National	Dormant conflicts emerge when community delimitation occurs, especially when boundary areas have resources of interest and there are not physical references of community land boundaries.	Moderate	High
Donor projects will fail to realize livelihood benefits for communities	National	With significant focus on rights recognition alone, communities may fail to realize benefits of strengthened tenure security.	Moderate	High
Community capacity after NGO-led projects may still be insufficient	National	Project proponents need to ensure a sustainable exit strategy for project implementers to ensure that gains in community decision making and enterprise capacity do not disappear when projects end.	High	High
Communities do not have financial resources to support internal governance needs	National	Given the costs of legal incorporation and key organizational tasks, communities may need to rely on external financial support until revenues from natural resource exploitation are sufficient.	High	High
Local government capacities remain insufficient	National	Local government Forestry Services roles are critical to long-term tenure security and benefits from communities from natural resources. In the absence of political will and government prioritization, service delivery and function in key roles may be insufficient.	High	Moderate

## Country Profile

# CÔTE D'IVOIRE

### COMMUNITY FOREST TENURE IN CÔTE D'IVOIRE AT A GLANCE

Total area under communal ownership (million ha) / % of national territory under communal ownership	unknown
Forest area under communal ownership (million ha) / % of nation's forests under communal tenure	unknown
Key government institutions for community forests	Rural Land Agency (AFOR); The Forestry Development Agency (Société de Développement des Forêts, SODEFOR); Corps Eaux et Forêts
FCPF REDD+ Jurisdictions:	National
FCPF REDD+ Advancements:	Readiness Package effective 2018; ERPD signed in 2019, ERPA pending

### COMMUNITY TENURE CATEGORIES IN CÔTE D'IVOIRE<sup>59</sup>

<p><b>Collectively held Land Certificates:</b></p> <p>Legal persons (including communities) in possession of a land certificate are allowed a transitory form of tenure under the 1998 Rural Land Law. Within three years of the issuance of the certificate, Ivoirian certificate-holders must apply for a definitive land title. Non-Ivoirians may apply only for an emphyteutic lease. In the meantime, rights under the certificate may be sold or leased.</p>	<p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Yes, belong to the community; can be used according to customary traditions</p> <p><b>Management:</b> Yes for both substance and commercial use</p> <p><b>Exclusion:</b> Yes</p> <p><b>Alienation:</b> Yes for both sale and lease</p> <p><b>Due Process:</b> Law does not protect the right to free and prior informed consent. Can be repossessed by the state if: failure to develop land; failure to register</p> <p><b>Duration:</b> 3 years</p>
<p><b>Collectively held Private Title:</b></p> <p>Communities holding title to a parcel of land have freehold rights. A land title may be sold to Ivoirians or passed on to heirs, and the property may be leased, but not sold, to non-Ivoirians or private companies.</p>	<p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Yes, belong to the community; can be used according to customary traditions</p> <p><b>Management:</b> Yes for both substance and commercial use</p> <p><b>Exclusion:</b> Yes</p> <p><b>Alienation:</b> Yes for both sale and lease</p> <p><b>Due Process:</b> unknown</p> <p><b>Duration:</b> Indefinite</p>

**IP and LC Country Context Note:** There are usage conflicts within Ivorian law and in REDD+ text with terms such as “local residents” and “traditional inhabitants,” which is an important and sensitive distinction in the country’s political and social sectors. The concept of autochthones (descendants of the original inhabitants of the area) is important as the state prefers to refer to these historic inhabitants of forests rather than migrants who have settled there since the 1980’s; a distinction many non-Ivoirians fail to make. Many people were internally displaced within the country in the 1980’s and 1990’s during an economic downturn, which led to land disputes between migrants and traditional communities and eventually contributed to armed conflicts between 1999-2011. The clarification of Indigenous Peoples or traditional communities’ tenure rights is a component of Côte d’Ivoire’s REDD+ strategy.

## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Côte d’Ivoire is divided between two large agro-ecological zones: the northern savannah zone where food crops, cotton and livestock predominate; and the forest zone of the south where most of the country’s cash crops, including cocoa and coffee, are produced. Côte d’Ivoire’s forests have decreased from 16 million hectares in 1900 to 7.8 million hectares in 1990 and to 3.4 million hectares in 2015. At the current time, 11 percent of the country’s surface area is forested. Of the remaining forests, 39 percent are located in protected areas, 25 percent in gazetted areas (*forêts classées*) and 36 percent in rural areas.<sup>60</sup> Côte d’Ivoire’s 231 protected forests (*forêts classées*), state land set aside for conservation, have been degraded by deforestation, with more than half of the country’s four million hectares of protected forest cut down for farmland. Today, 387 forest logging permits cover rural and gazetted lands, though historically logging has been concentrated in rural areas.<sup>61</sup>

Agriculture, driven by cocoa production, has been the main driver of deforestation in Côte d’Ivoire. Cocoa plantations occupy approximately 3.5 million hectares, of which 750,000 hectares are located in gazetted areas. The cocoa sector farms, all managed by smallholders, produce on average 40 percent of the world’s cocoa supply, with annual exports exceeding two million tons in 2018. An estimated 20 percent of the population depends on cocoa for its livelihood. As land availability in rural areas has diminished, more farmers have moved into ga-

zatted forests and protected areas, which today account for a quarter of national production.<sup>62</sup>

The prevalence of farmers who have migrated to from other regions or countries into the forest areas of Côte d’Ivoire make the recognition of community forest tenure more complex than other cocoa producing-countries such as Ghana. Côte d’Ivoire’s farms were largely created by migration to forest zones by outsider ethnic groups and foreigners, mostly from Burkina Faso. After independence migration increased to the point where migrants outnumbered locals in many areas. (USAID 2021). Initial arrangements based on gifts from migrants to local families increasingly became financial agreements and outright land sales as land pressure increased through the 1980. In the 1990s and 2000s, sharecropping arrangement called *planter-partager* (plant and share) became prevalent, whereby outsiders would clear forests and build a farm and then half of the farm would revert to the landowner upon crop maturity.<sup>63</sup>

The vast majority of rural land in the country (about 98 percent) continues to be governed by customary practices.<sup>64</sup> However, customary procedures for security of tenure and transfer of land have weakened in the last few decades as population growth, immigration and the commercialization of agriculture have increased competition for land.

In spite of the prevalence of *de facto* customary tenure in forest areas, centrally designed and state-driven approaches to land and forest tenure that fail to recognize customary practices are a characteristic of Côte d’Ivoire’s legal system. This has led to legal pluralism between statutory law and customary practices. There is no legally recognized category of customary land in Côte d’Ivoire, despite the fact that many communities operate on a basis of customary tenure in practice. Instead, the 1998 Rural Land Law treats customary rights only as a temporary process step in the establishment of private rights through a national titling system controlled by the central government.<sup>65</sup>

The 1998 Rural Land Law was the first recognition by the country’s legal system that customary landholders had rights. However, the law also made those rights transitional, a stepping-stone to a statutory regime of rights. The main element of the law – the issuance of *certificats fonciers* to customary owners – is accompanied by a requirement for con-

version of those certificates to land titles within three years. After the three-year period the control of the customary systems is extinguished, and the rights are treated legally as private rights only. In this way, the 1998 law “recognized customary rights in order to extinguish them” and aimed to do that nationally within 10 years (USAID, 2016). The law stated that after 10 years unregistered land would revert to the state, a deadline that was extended in 2013 to 2023.

However, the law has been slow to enact because of political turmoil and violence in the country, the high cost and complicated procedures required to complete the recognition process, and disagreements on how provisions should be interpreted and applied in customary areas, since it essentially requires customary rights to become private rights.

According to the 1998 law, the transformation of customary into communal and private ownership happens in two steps: (i) transitional land certificates are issued to any applicant (individual or group) that can prove continuous and uncontested use of the land; (ii) within three years of certificate registration, individual certificate holders who are Ivorian citizens may apply for land titles, whereas lands certified to non-Ivorians must first be registered to the state, who can then issue a long-term land lease to the applicant. Land recognition can only be attributed to a legal entity (i.e., the state) or individual. While foreigners are allowed to obtain customary rights if ceded by Ivorian nationals – 25 to 30 percent of certificates for customary rights are given to foreigners – the latter are not allowed to have title to this land. The 1998 Law also grants the right of alienation of customary rights (i.e., concession of customary property), but holders of these concessionary or unregistered customary rights have limited rights compared to entities with full property titles.

A new forest code adopted in 2014 (*loi N°2014-427 du 14 Juillet 2014*) classified forests by different property rights regimes, including government forests governed by public law (*domaine public de l’Etat*) like protected areas; government forests governed by private law (*domaine privé de l’Etat*) which included all gazetted forests (*forêts classées*), and forests on non-titled rural land or land without a designated owner (*terres sans maître*), as well as private land.

The 2014 forest code recognized customary land rights but only if they are registered according to the 1998 ru-

### BOX: KEY LEGISLATIVE AND LEGAL ENACTMENTS SUPPORTING LOCAL COMMUNITY RIGHTS TO LAND AND NATURAL RESOURCES

Rural Land Law No 98-750 of 1998: The law transforms customary land rights to private property rights regulated by the state, but because of armed conflict and the government’s lack of capacity the law has not been effectively implemented. Modalities and operational procedures for legal recognition are made explicit in decrees and articles associated with this law.

- » Collective rights are affirmed in Article 9 and 10 of the 1998 law.
- » A 2019 legal amendment to Article 4 clarifies that titles can be held by communities.

Forest Law 2014-427, Public Domain Law, 1928: The primary law that governs forests and forest land in Côte d’Ivoire. Its objectives include restoring at least 20 percent of the country’s territory to forest.

2019 Forest Code: The new forest code was adopted on July 17, 2019 by the National Assembly. Its goal is to further protect against deforestation.

ral land law. The code also established a relationship between land rights and tree rights, in which recognition of land rights was required to recognize tree rights. The 2014 code also created a provision for local government (*collectivités territoriales*) to take public or private ownership of forests. The 2014 forest code also created a category of private ownership of forests, which included trees in a village or forests on duly registered rural land per the 1998 rural land law.<sup>66</sup>

The new forest law of 2019 (*loi N°2019-675 du 23 Juillet 2019*) explicitly addresses tree tenure for the first time, continuing to give primacy of tree tenure to the underlying landowner. The 2019 forest law creates a new category of “agro-forests” within the state-owned private domain. Agro-forests can be up to 20 percent plantations, but they are still owned by the government, so plantation owners cannot claim ownership over natural or even planted trees. Concessions can be granted for agro-forests, so an agro-forest could be managed by a private sector entity or association. In concert with these legislative changes,

## BOX: FOREST DEFINITION IN CÔTE D'IVOIRE

According to the 2014 Forest Code, forest is constituted from 0.1 hectare for trees whose crowns cover at least 30 percent of the surface and can reach maturity of at least 5 meters high. This very broad definition bears the risk that many areas may be considered forest, even areas with little or no biological diversity. It also makes it easy to make the forest cover objectives that Côte d'Ivoire has committed to achieving more accessible in the near future, i.e. the target of 20 percent forest cover throughout the national territory, but without actually deriving all the benefits (cultural, social, economic, recreational, etc.) that forests can offer.

Source: Client Earth Analysis of Cote D'Ivoire's Forest Code  
<https://www.clientearth.org/legal-analysis-of-the-new-forest-code-in-ivory-coast>

the current government has embraced the concept of “zero-deforestation cocoa” as part of its broader commitment to increasing the country’s forest cover from 11 to 20 percent by 2030.<sup>67</sup>

In Côte D'Ivoire's pluralistic legal system, questions arise as to whether the transferor can legitimately transfer rights to forest land, how the parties understand the nature of the transfer – whether as a sale, a grant, a lease or a loan – and what rights and obligations arise from the transaction.<sup>68</sup> Land is viewed as belonging to the lineage of the original inhabitants of an area. It is often difficult to determine who holds what rights to trees and forest land because of the coexistence or legal pluralism of formal and customary tenure systems, and uncertainty around transfers from original local families to migrants. The existence of multiple tenure regimes breeds uncertainty around forest land transactions. For example, under the various customary law regimes in Côte d'Ivoire, communities do not allow land to be alienated from the community. This poses problems when customary groups enter into land transactions with migrants, or others outside the customary group system who operate under a property rights framework whereby a transfer extinguishes rights of the transferor. Further discrepancies stem from the 2002-2003 armed conflict and 2010-2011 post-election crisis: groups in some regions took

advantage of the security vacuum within forests to forcibly take control of large sections of protected forest and sell tracts of land to farmers.

Côte d'Ivoire has not developed a specific system for restitution or compensation for Internally Displaced Peoples and refugees from properties abandoned due to conflict. Customary practices for dispute resolution involve compromise and the avoidance of a zero-sum, winner-take-all outcome. However, mediators, usually village chiefs or other traditional authorities, are often viewed by migrants as partial, and, by younger autochthones as illegitimate.<sup>69</sup> The armed conflicts, the displacement of the populations it has generated and now, the return of these populations has exacerbated pre-existing land disputes in this area. During the displacement period, much of the land owned by displaced people has been sold or leased, which complicates their return by depriving those returning of their livelihoods and amplifies inter-community feuds.<sup>70</sup>

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

The REDD+ TAP report, which reported on a series of focus groups discussing the R+ Readiness Plan, notes that civil society and local capacity building are lacking in REDD+ projects. The report points out weaknesses regarding involvement of civil society. A comprehensive communication strategy is not yet fully developed between national government and other stakeholders, and weaknesses exist in delivering feedback (it is only top down) and building civil society capacity. Fuller incorporation of local/traditional government authorities, rural land users, NGOs, and others into decision making processes will be an important first step to better securing customary tenure. An informant for this study, on the other hand, reported strong government will and commitment to land reform and civil society capacity, with money being the main barrier.

The 1998 Rural Land Law remains largely unimplemented; however, it is a strong focus for the Ivorian government and donors. This legal avenue for statutory rights is a clear opportunity to support communities that should be

examined and supported. At the same time, moving toward a rural land tenure regime governed by statute rather than by custom has proven to be an enormous challenge in Côte d'Ivoire. Ongoing efforts to re-invigorate the implementation of the 1998 Rural Land Law could create opportunities to re-examine the relationship between customary and statutory land systems, and in consultation with customary groups, decide whether the current statutory system needs adjusting to create arrangements and procedures that better satisfy the needs of the rural population.

A key vehicle to support this opportunity is the Land Policy Improvement and Implementation Project for Cote d'Ivoire with World Bank financing to advance the recognition of land rights in three areas: (1) build the capacity of the institutions charged with implementation of the land policy and the 1998 Rural Land Law, and establish

a viable land information system and geodetic network; (2) support implementation of the national rural land tenure security program whose objective is to develop and test a streamlined, simplified, low-cost and participatory systematic registration process to formally recognize customary land rights – such as a land certificate or a lease agreement; (3) train land tenure professionals to help develop the human resources necessary for the implementation of land policy at the national level.

Other opportunities include supporting the following: Alternative dispute resolution to assist traditional and local government authorities in establishing acceptable resolution mechanisms, especially with migrants, and preserve social cohesion; women's land rights; the suspension of forceful evictions; integration of land clarification and formalization into ongoing cacao projects; and village mapping initiatives.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>71</sup>	Location of investments	Timeframe of investments <sup>72</sup>
Expand / Create more flexible rural land tenure types	<ul style="list-style-type: none"> <li>» Simplify certification under the 1998 Rural Land Law with more participatory input from the rural population.</li> <li>» Consider options that permit continuation of customary authority on certified land.</li> </ul>	Government (AFOR), Customary Groups, Rural Land Users	Large	Rural, National	Short and Medium term
Support women's land rights	<ul style="list-style-type: none"> <li>» Custom excludes women from land ownership even though they produce and market most of the food in Côte d'Ivoire. Legal education programs in rural areas could help women secure and assert their land rights.</li> </ul>	Government, CSO, Village and Rural Land users	Medium/ Large	Rural, National	Med/Long-term
Facilitate resolution of land disputes involving migrants	<ul style="list-style-type: none"> <li>» Support customary practices for dispute resolution involving mediation and compromise.</li> </ul>	NGOs experienced in Alternative Dispute Resolution, Traditional and Local Government Authorities	Medium	Rural, National	Medium
Respect human dignity while addressing environmental initiatives	<ul style="list-style-type: none"> <li>» Refrom environmental protection and enforcement measures to protect human rights.</li> </ul>	SODEFOR, Forest dwellers	Medium	Protected Forest Areas	Long-term



Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>71</sup>	Location of investments	Timeframe of investments <sup>72</sup>
Guide/support land certification and cacao and other agricultural projects to address land rights	» Support implementation of the PAMOFOR project for integrated land certification. » Link projects like the Cacao and Forest Initiative, with programs to secure land rights when adequately guided / supported such as public-private partnership with the Côte d'Ivoire Land Partnership (Meridia, Hershey, et.al.).	Ministry of the Economy and Finance, private sector, MINEF, MINADER, AFOR	Small/Medium	Forest Areas	Medium
Support participatory mapping initiatives	» Support participatory mapping of rural land, such as the work of organizations such as Audace Institut Afrique (AIA) through the project "Liberating Rural Land's Potential In Côte d'Ivoire."	NGOs experienced in mapping, AFOR, World Bank	Medium/Large	Rural, National	Medium/Long term

## STATUS OF LAND AND FOREST RIGHTS<sup>73</sup>

Key Element of Tenure Security <sup>74</sup>	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	Despite the recognition of collective or individual property for villages and landowners through the 2014 Forest Code (Art. 21), uncertainty remains surrounding land law with regards to field and land boundaries for unregistered land, which will be transferred to the private domain of the state under the owner-less land (terra nullius) regime. There is no constitutional recognition of community-based tenure rights in Cote D'Ivoire; however, there is a strong legal framework through the Rural Land Law to transform customary to statutory rights.	Address legal gaps in the 2014 Forest Code: It refers to the forest management agreement, but the latter is not defined in the Code. Create more flexible rural land tenure types.
2. Implementation of legal recognition.	Customary rule is typically accepted by the government; however, transfer of lands is not well defined and can cause discrepancies. A 1998 Rural Land Law, which aims to transform customary land rights into private property rights regulated by the state, has been slow to enact because of political turmoil and violence in the country.	Build institutional capacity for implementation
3. Appropriate regulations for land and resource management	International scrutiny for alleged authoritarian and abusive methods deployed by SODEFOR for methods of forced eviction and arrests when there is a lack of proper permits.	
4. Effective support from responsible government agencies	There is government willingness, but perhaps not capacity, to implement current laws in place. Corruption is said to impact all bureaucratic undertakings, contract awards, customs and tax matters, the accountability of forest security forces and judicial proceedings – however this was disputed by an informant for this study.	Build government capacity to support community land and forest rights
5. Empowered and inclusive indigenous and community governance	There have been criticisms that community leaders have not been involved with land projects in Cote D'Ivoire. Local and traditional communities appear to be skeptical of the real benefit of transforming customary rights to statutory. The customary authorities are widely respected and are generally skilled at arriving at a compromise in which each party to the dispute derives some advantage.	Examine how to build capacity and communication between government and communities across initiatives

Key Element of Tenure Security <sup>74</sup>	Country Findings	Opportunities for policy/action/investment
6. Systems for recording community forest tenure rights	Land in rural Côte d'Ivoire is for the most part attached to the lineage of a specific area's original inhabitants. Rights of permanent use are regarded as communal, inalienable, and perpetual. Administration and management of land-related issues, most importantly the allocation of plots, is generally in the hands of village chiefs or land chiefs, who are patriarchs of the lineage.	
7. Enforcement of tenure rights	It is difficult to determine who holds what rights to trees and forest land because of the coexistence of formal and informal tenure systems. The existence of multiple tenure regimes breeds uncertainty around forest land transactions.	
8. Protection of collective tenure rights in relation to other forms of tenure and land use	In Cote D'Ivoire's pluralistic legal system, questions arise as to whether the transferor can legitimately transfer rights to forest land, how the parties understand the nature of the transfer – whether as a sale, a grant, a lease or a loan – and what rights and obligations arise from the transaction.	
9. Conflict and dispute resolution	Customary practices for dispute resolution, involving compromise and the avoidance of a zero-sum, winner-take-all outcome, appear to be better suited to resolving land conflicts than the formal judicial system. The challenge here is that the mediators, usually village chiefs or other traditional authorities, are often viewed by migrants as biased, and by younger autochthones as illegitimate.	Should better facilitate resolution of land disputes involving migrants

### SIGNIFICANT PROJECTS IN PIPELINE<sup>75</sup>

Project Name	Location	Financier	Implementer	Budget (US\$ millions)	Duration
Cocoa Integrated Value Chain Development	National	World Bank	Min. Ag.; Conseil du Café-Cacao	350	Pipeline
Cote d'Ivoire Land Policy Improvement & Implementation Project	National	World Bank	Nat. Rural Land Agency (AFOR), & Min Ag.	50	03/2018-09/2023
Forest Investment Program	National	World Bank	Min. Env., Sanitation & RD	15	05/2018-05/2023
The Cocoa and Forests Initiative* (see risk analysis in next table) <sup>76</sup>	National	P4F and BUZA Sustainable Trade Initiative (IDH), World Cocoa Foundation, others.	Ministry of the Economy and Finance, private sector, MINEF, MINADER	Not publicly available	2018-2022
Promoting zero-deforestation cocoa production for reducing emissions in Côte d'Ivoire (PROMIRE)	National	Food and Agriculture Organization of the United Nations	Food and Agriculture Organization of the United Nations and the Republic of Côte d'Ivoire, represented by the Ministry of Environment and Sustainable Development (MINEDD)	12	2020-2025



## RISK ANALYSIS AND RISK MITIGATION MEASURES

Risk	Likelihood	Impact	Mitigation Measures
<b>Long-term risks</b>			
Social problems due to land titles in the priority regions could create insecurity and delays in implementation	Medium	High	Implementation of effective safeguards
Insufficient engagement by key stakeholders from the government of Côte d'Ivoire and the cocoa industry	Medium	High	Assure transparency of national policy with implementing decrees and implementation procedures Award contract with clear deliverables and safeguard clauses
Deforestation may move to the regions not covered by the start-up phase of the initiative	Medium	Medium	Establishment of appropriate and effective forest/protected area monitoring mechanisms (satellite imagery) at the national level
Relocalisation of population may create social unrest	Medium	Medium	Develop standards/safeguards to take into account social aspects
<b>Short-term risks</b>			
Limited or late availability of funds could result in delay in implementation	Medium	High	Rely on existing investments and financial commitments Engage financial and technical partners in thematic groups to co-create and ensure co-ownership
High levels of bureaucracy could slow down implementation	Medium	Medium	Ensure the commitments of the government and the cocoa industry at the highest level Apply laws with transparency
<b>Operation risks</b>			
Insufficient management of information hampering accountability and efficiency	Medium	High	Establish a permanent secretariat to provide resources for effective monitoring of field activities

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Social and legal conflicts due to Internally Displaced People or new occupation through conflict	National	The country is reconciling with land and social disputes over mass migration that has occurred since the 80s, which puts into question traditional occupancy and who is entitled to land.	Large	High
Social and legal conflicts with migrant-descendent populations	National	Migrant groups who have received land use rights from original occupant families often have conflicts with the original occupant families when both seek to certify and title or transact the land.	Large	High
Corruption	National	Corruption is stated to be widespread and impacts all bureaucratic undertakings, contract awards, customs and tax matters, the accountability of the security forces and judicial proceedings. Some sources disagree that this is a constraint.	Medium	Medium
Tree Tenure	National	Tree tenure may remain undefined legally if not on statutorily certified land, complicating efforts to certify trees.	Medium	Medium
Political Economy of Forest Rights	National	Central government has appeared committed to a centralized, statutory-driven forest land certification process, which does not necessarily reflect local political preferences in forest areas, leading to legal pluralism and lack of consensus on rights recognition of local groups.	High	Medium

## Country Profile

# DEMOCRATIC REPUBLIC OF CONGO

### COMMUNITY FOREST TENURE IN THE DEMOCRATIC REPUBLIC OF CONGO AT A GLANCE

Total forest area under communal designation (million ha) / % of total forest area under communal designation	1.2 <sup>77</sup> / <1%
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Ministry of Environment, Nature Conservation and Sustainable Development (MECNDD)</li> <li>» Ministry of Land Affairs</li> <li>» Provincial government administrations</li> </ul>
FCPF REDD+ Jurisdictions:	Province of Mai-Ndombe
FCPF REDD+ Advancements:	ERPA signed (2018)

### COMMUNITY TENURE CATEGORIES IN THE DEMOCRATIC REPUBLIC OF CONGO<sup>78</sup>

<p><b>Local Community Forest Concession (LCFC -Concessions Forestières Communautaires):</b> Local communities (populations with internal cohesion such as clans, organized by custom) can gain title to areas within Protected Forests (not Classified or Permanent Production Forests) which they can prove to have customarily held. This mechanism is focused on timber production and cannot exceed 50,000 ha.</p>	<p><b>RRI Tenure Type:</b><sup>79</sup> <b>Designated</b></p> <p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Yes, subsistence rights, and commercial rights with an approved Forest Management Plan and permits</p> <p><b>Management:</b> Yes, with approved Forest Management Plan</p> <p><b>Exclusion:</b> Yes</p> <p><b>Alienation:</b> Limited; thirdparties can operate in LCFCs</p> <p><b>Due process and Compensation:</b> Future decrees are expected to propose that rights will be irrevocable, though Constitution and 1977 Expropriation Law (77-001) recognize the state's ability to expropriate land under concession subject to payment of compensation.<sup>80</sup></p> <p><b>Duration:</b> Unlimited</p>
<p><b>Conservation Concessions allocated to Communities (Community Reserves):</b> Contracts between public administration and person or local community in which the concessionaire manages to conserve biological diversity.</p>	<p><b>Access:</b> Depends on contract and management plan</p> <p><b>Withdrawal:</b> Depends on contract and management plan</p> <p><b>Management:</b> Yes, where management is fully transferred, and with approved management plan</p> <p><b>Exclusion:</b> Depends on contract and management plan</p> <p><b>Alienation:</b> No</p> <p><b>Due process and Compensation:</b> Subject to contract law</p> <p><b>Duration:</b> Up to 25 years</p>

## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

A majority of people in the Democratic Republic of Congo depend on forests for their livelihoods. Forests cover about 67 percent of the DRC's territory and constitute almost half of the tropical forest cover in Africa. Deforestation rates are low compared to other tropical regions but population growth, national industrial development plans, and smaller-scale production of charcoal, crops, minerals, timber, and bush meat are rapidly increasing pressures on forests.<sup>81</sup> Deforestation rates have also climbed in recent years due mostly to the expansion of agriculture (slash & burn model), and in part a result of the inadequacy of legal requirements for concessionaires to reforest, and unrestricted harvesting of some areas.<sup>82</sup>

Chronic land and forest insecurity are typical throughout the DRC and contribute to persistent and potentially worsening poverty. Considered a fragile state,<sup>83</sup> the DRC is – despite its extreme richness in natural and mineral resources – one of the poorest countries in the world. In 2019, the Internal Displacement Monitoring Centre (IDMC) placed the DRC as having the world's second largest displacement crisis after Syria. Political and economic instability, combined with continued tensions between communities, has led to ongoing resurgence of intercommunal violence and clashes between armed groups.<sup>84</sup> The roots of the conflict, amongst others, are in land and territorial issues. Many conflicts pending in the courts and informal dispute resolution bodies are related to land. The government is, in many ways, still in process of formation, and conditions for implementing laws and programs throughout the largely roadless, forested country are extremely challenging.

The 2005 constitution began a decentralization process that led to the creation of Mai-Ndombe Province in 2015. Provincial government capacity is still extremely low in the land and forest sectors and the provincial administration lacks resources and staff. The diversity of customary institutions and communities throughout the DRC is poorly studied and understood by government and donors alike, and there is little contact between many communities and government officials. As a result, communities and IPs have very little direct knowledge of the intent and requirements

of sectoral laws and look to varied customary laws and institutions which enjoy higher trust and legitimacy. Moreover, very few of the benefits of natural resource exploitation return to communities, and corruption in relations between the government and private sector interests is pervasive.<sup>85</sup>

Beyond a lack of government capacity, the legal framework has poorly harmonized sectoral laws and is in conflict with customary laws which prevail throughout the vast majority of the country. In addition, the framework is often inapplicable to widely varying cultural contexts and needs of the communities, and has gaps that impede its application and implementation. For example, the Land Law of 1973 still lacks the legal decrees necessary for its full implementation. Despite this and the general lack of implementation, the government has committed to implementing a new land policy and reforming the Land Law, and there has been marked progress in recent years on improving the legal framework.

The 2002 Forest Code, which establishes state ownership of forest lands, also created the concept of “local community forest”, giving Indigenous Peoples and local communities rights to access, use, forest management (within limits) and self-governance. The law puts a limit to the scale of community forest concessions (50,000 hectares) and defines communities' rights on the basis of families and clans, which may exclude application from some groups. While this scale may seem small (compared to historic or customary rights), it represents the simplest procedure in the DRC for securing large areas and therefore attracts communities primarily interested in security of their land and not necessarily in sustainable forestry activities. This increases the risk of deforestation. The 2014 decree related to community forestry was another step in the right direction but left gaps for its implementation, and the costs of formalization and regulatory compliance pose insurmountable barriers for many communities. Subsequent Ministerial Orders (MO) have helped close some of these gaps. The MO 25 (February 2016) provided rules for managing and using a “Local Community Forest Concession” (LCFC) model, and MO 84 (October 2016) defined norms for small-scale logging in LCFCs. The creation in 2014 of a sub-department devoted to community forestry at the Ministry of the Environment, and the more recent finalization of a national strategy to promote community forestry provided a new institutional

context for community forestry and for the enforcement of the new regulations.<sup>86</sup>

Within this framework, millions of hectares of forests have become potentially available to communities, as they now could request the government to grant them – in perpetuity and with use and management rights – community concessions up to the 50,000 hectares. This provided communities, for the first time, formal rights to the forests they have inhabited under customary law, including the very important right of recourse if unauthorized resource extraction occurs.<sup>iii</sup> Under this framework, Community-based Forest Management (CBFM) in the DRC has taken the form of local community forests and LCFCs.

By the beginning of 2018, a few small LCFCs had been created, with many more pilot experiments launched to test and contribute to the development and application of the CBFM approach in DRC.<sup>87</sup> All these initiatives have been financed with international funds, and are operated primarily by local or international NGOs, with the purpose of contributing to the design of clear management rules for CBFM and for testing them for various land uses: biodiversity protection, carbon sequestration, small-scale logging, sustainable hunting, fuelwood production. A recent review of these encountered several shortcomings. Specifically, the assessment, carried out in the Eastern province of the DRC, came to three principal conclusions: (1) most activities conducted under the Local Community Forest Concessions (LCFC) model deal with rural development, and not with forestry operations *per se*; (2) several forestry activities such as biodiversity conservation or carbon sequestration are not detailed in the management documents and appear to have little legitimacy for local populations; and (3) the pilots and programs have largely failed to consider the importance of financial benefits/returns to the communities. Two LCFCs, analyzed in detail, showed a negative financial performance due to the inception and implementation costs being substantially higher than the medium-term profits.<sup>88</sup> The review concluded that community forestry is unlikely to develop in the DRC unless local people are guaranteed that it will contribute to improving their livelihoods, notably their financial and physical capital. It suggests that this requires a shift in LCFC initiatives to focus on actual productive uses of forest resources, with financial performance systematically assessed *ex ante*, and a simplifi-

cation of the legal constraints to reduce the cost of creating and managing a LCFC.

Recent data demonstrates positives of the LCFC model and provide reasons for cautious optimism about the model's future. An analysis by Rainforest Foundation UK (RFUK) found that the rate of deforestation in LCFCs in 2019 was 46 percent lower than in logging concessions and 23 percent lower than the national average.<sup>89</sup> As of early 2021, over 2 million hectares of LCFCs have been granted or are in the process of being granted,<sup>90</sup> and RFUK estimates that up to 75 million hectares could be potentially available to communities.<sup>91</sup>

Many Indigenous Pygmy Peoples face persistent discrimination in all manners, despite limited legal protections. Pygmy camps, regardless of repeated requests for formalization of rights, are usually not recognized by customary or statutory law. This lack of recognition limits their participation in community governance institutions and excludes them from negotiating rights and benefits to natural resources. As forest peoples, Pygmy Peoples have also been subjected to pressures from actions directed at enhancing protection and management of the country's protected areas system; efforts which have included expansion of existing parks. This has resulted in the displacement of pygmy communities from their lands without their consent and led to pervasive landlessness and tenure insecurity among many pygmy communities.<sup>92</sup> A new law, passed in April 2021 confirms IP land rights and provide education and healthcare services.<sup>93</sup> Gender discrimination is also prohibited by law, though discriminatory practices are common and women face very unequal access to community forestry mechanisms. In general, women have very low rates of participation in politics and governance, and customary law, as commonly interpreted, affords women few land rights. Indigenous women in particular are likely to suffer from significant discrimination and violence.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE IN FOREST AREAS:

The DRC has attracted significant external donor support in recent years due to pressing social conditions, the tim-

ing of the ongoing formation of the state and legal frameworks governing natural resource sectors and the critical conservation and climate value of its forests. Despite the challenges, there are many reasons to be optimistic about opportunities to advance IP and LC forest land tenure security in the DRC:

- » **Diverse donor activity:** Mai-Ndombe Province has multiple initiatives underway and planned (about 20 as of this publication) from a diverse array of donors, including the World Bank, the European Union, European governments, the United States, international NGOs and the private sector. While coordination between initiatives remains a challenge, these diverse partnerships and supporters can contribute stability to programs and lend considerable experience in the forest and land sectors.
- » **High levels of interest for reform:** Persistent conflicts at the local level have translated into high demand for forest and land tenure reforms. Supporters include local communities, traditional authorities, local land and forest administration officials/staff, CSOs and NGOs.
- » **Political context:** The national political context is such that the government has expressed support for local populations as a priority.
- » **Business actors are pragmatic:** Widespread, persistent insecurity for companies operating in the DRC in the forest, agricultural and mining sectors has created a situation where these companies are familiar with working in a highly uncertain context. Nevertheless, a clearer tenure regime would sup-

port their interests, and reforms are not perceived as a significant risk as the companies are used to navigating uncertain statutory and customary legal conditions.

- » **Strong civil-society organization/non-governmental organization links to government:** Government capacity and institutions, especially at the provincial level, are dependent on support from CSOs/NGOs. Working together over many years, government and CSOs/NGOs have developed significant trust. This deep operational experience allows CSOs/NGOs to play a significant role in advancing tenure for IPs and LCs.

Opportunities to advance rights include the reform of land and forest rights to resolve legal pluralism and support the operationalization of legal implementing decrees. Additionally, the development and implementation of fit-for-purpose formalization procedures, zoning, and identification of customary/IP land rights can support expanding recognition. This effort relies on a significant investment in community-level assessment, in order to appropriately adapt downstream efforts of rights recognition to the diversity of subnational contexts. Tenure security can be strengthened by supporting key government institutions to fulfil their roles and by supporting community-level governance and conflict resolution. Rights can be leveraged to benefit communities by investing in the development of local capacity to manage resources and in supporting community forest enterprises to develop business skills and integrate into profitable value chains.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>94</sup>	Location of investments	Timeframe of investments <sup>95</sup>
Land and forest rights reform	<ul style="list-style-type: none"> <li>» Organize and improve coordination of international and national NGO/CSO and donor leadership to support national government with ongoing land and forest sector legal reforms.</li> <li>» Support leadership to mediate potential conflicts from reform process.</li> <li>» Resolve legal pluralism by defining roles of statutory law with regards to customary law (see below), striking a balance between local customs and practices and guidelines for economic development.</li> </ul>	National policymakers, External donors, CSOs/NGOs	Moderate	National	Long-term

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>94</sup>	Location of investments	Timeframe of investments <sup>95</sup>
Support operationalization and implementation of legal instruments	<ul style="list-style-type: none"> <li>» Support drafting and adoption of implementing decrees for the new Land Law, Forest Code (2002), land use planning (upcoming), indigenous rights law (upcoming) and other sectoral framework laws.</li> <li>» Support regulatory reforms to reduce the complexity &amp; formal costs of developing, managing, &amp; governing LCFCs so that become feasible for communities to bear.</li> <li>» Support implementation of legal instruments within government administrations, including enforcement and education of relevant stakeholders.</li> <li>» Support development &amp; implementation of cost effective, scalable, fit-for-purpose formalization procedures for IP and LC tenure categories.</li> <li>» Implement, at large scale, zoning exercises in relation with the upcoming land use planning law to identify the customary land rights, in particular for IPs.</li> </ul>	National/provincial policymakers/officials, CSOs/NGOs	Large	National	Long-term
Support for provincial government administrations	<ul style="list-style-type: none"> <li>» Technical capacity and human/logistical/financial support to carry out activities related to IP and LC tenure security.</li> <li>» Support conflict resolution mechanism and law enforcement to increase trust in the formal system.</li> </ul>	Provincial government administrations, CSOs/NGOs	Large	National	Long-term
Sensitize national policymakers to rural stakeholder needs, customs & context	<ul style="list-style-type: none"> <li>» Carry out social assessments to better understand contextual conditions in priority rural areas/communities.</li> <li>» Focus assessments on the recognition of local traditional political organizations and mechanisms for NRM.</li> <li>» Disseminate findings to key policymakers/officials, CSOs/NGOs and donor community to promote appropriate development strategies/investments that prioritize communities.</li> <li>» Findings can inform ongoing land sector reform.</li> </ul>	National policymakers, National/subnational officials and government technical staff, CSOs/NGOs, External donors	Small	National	Short-term
Resolve legal pluralism by defining roles of statutory law with regards to customary law	<ul style="list-style-type: none"> <li>» Better describe the customary laws and categorize the various actors at the local level</li> <li>» Support local consultations on the source of land insecurity in order to feed into legal reforms and development of implementing decrees related to resources accessed by communities</li> <li>» Identify and address the consequences of the formalization of the land rights in relation with the family law (inheritance) and social organization</li> </ul>	Local communities/IPs, National/subnational officials/staff, CSOs/NGOs	Moderate	Sub-national	Long-term



Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>94</sup>	Location of investments	Timeframe of investments <sup>95</sup>
Capacity development and support for local communities	<ul style="list-style-type: none"> <li>» Support land conflict resolution mechanisms and initiatives at local level</li> <li>» Support capacity building at community level for the long-term, sustainable management of communally managed forestlands.</li> <li>» Strengthen local governance &amp; decision-making structures, recognizing that the costs of setting up &amp; operating the various committees currently required to manage the system is very high &amp; unsustainable.<sup>96</sup></li> <li>» Increase the sustainable revenues that the communities would draw from forest and agroforestry activities in the LCFC instead of relying on agriculture as the main source for the livelihoods</li> <li>» Promote simple forestry or agroforestry exploitation models that generate revenues for the communities as an alternative to agriculture.</li> <li>» Support development of Community Forest Enterprises: (i) start-up capital, training and technical assistance, &amp; assistance to comply with bureaucratic requirements; and (ii) business development services to identify practical/realistic options for integration of local forest products/ productive systems into sustainable and profitable value chains, and provide for ex ante financial analysis to identify feasible investments and avoid engagement in activities that are unprofitable in the medium term.</li> </ul>	Local communities/IPs, National/subnational officials/staff, CSOs/NGOs	Large	Sub-national	Medium to Long-term

## STATUS OF LAND AND FOREST RIGHTS<sup>97</sup>

Key Element of Tenure Security <sup>98</sup>	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	Despite recent progress with local community forest concessions (LCFCs), the DRC lacks national land use planning, laws on natural resources are not harmonized, the bundle of rights for IPs and LCs for forests have limitations, and a parallel system of customary tenure confuses ownership and rights. The constitution prohibits discrimination based on race, ethnicity, tribe, cultural or linguistic minority, does not specifically prohibit discrimination against Indigenous Peoples. While it does not specifically recognize IP tenure rights, Article 34 recognizes collective property rights. Women's property rights have equal constitutional protection and legal affirmation, though gender-sensitive protections do not exist for community-based tenure regime-specific, community-level indicators (i.e., membership, inheritance, voting, leadership and dispute resolution). <sup>99</sup>	Land and forest rights reform; Support operationalization of legal instruments; Resolve legal pluralism by defining roles of statutory law in regards to customary law

Key Element of Tenure Security <sup>98</sup>	Country Findings	Opportunities for policy/action/investment
2. Implementation of legal recognition	Implementation of forest legislation is insufficient and parallel customary and statutory systems complicate de facto ownership claims. In general, women have poor representation in decision-making related to forests. 86.7% (196.6 m ha) of the country's land is estimated to be claimed by IPs and LCs but unrecognized. <sup>100</sup>	Support operationalization of legal instruments
3. Appropriate regulations for land and resource management	Most procedures are costly and ineffective; permitting is rarely carried out; land use planning has an insufficient legal, regulatory and institutional framework.	
4. Effective support from responsible government agencies	Government support and capacity at the provincial level are minimal and major investments are needed to improve capacities. Minimal resources available to support community tenure security. Conflicts of interest and corruption are common.	Support for provincial government administrations; Sensitize national policymakers to rural stakeholder needs, customs & context
5. Empowered and inclusive Indigenous and community governance	Community governance largely excludes women and vulnerable groups such as IPs. CSO support in the DRC is strong and government institutions in environment/development rely on this support and capacity. Internal community governance is likely to vary widely.	Capacity development and support for local communities; Support operationalization of legal instruments (e.g., zoning)
6. Systems for recording community forest tenure rights	Access to information is decentralized and may be difficult to obtain. Unclear the extent that maps are made accessible - no legal provisions require that they do. Online access (not available to most of the general public) to WRI Timber Atlas is available and shows land uses, concessions, community forests, oil and mining permits. Information on specific forest concessionaires and concessions can be accessed from forestry ministry and is available by request.	
7. Enforcement of tenure rights	Enforcement is weak; resources for forest monitoring and enforcement are insufficient; political, administrative, and military authorities are at times complicit in illegal logging activities. Less than 1% of MENCT staff are enforcement officers.	
8. Protection of collective tenure rights in relation to other forms of tenure and land use	FPIC and IP protections are required by law (international conventions) but rarely implemented; conflicts between land uses are common; IPs do not receive special status or protections in practice.	Sensitize national policymakers to rural stakeholder needs, customs and context
9. Conflict and dispute resolution	Mechanisms are in place but not functional; conflicts are common between communities, communities-government, and within communities.	Support for provincial government administrations

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>101</sup>

Project Name	Location	Financier	Budget (millions, US\$)	Duration
National Agriculture Development Program	National	WB	500	Pipeline
CAFI AF Forest Dependent Community Support Project	Mai Ndombe and 16 other territories	WB (Trust Fund)	1.8	Pipeline
Purchase/Sale of Emission Reductions (ER) under Mai Ndombe ER Program	Mai Ndombe	WB (Trust Fund)	55	2018-

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Complexity and inconsistency of legal framework	National	Sectoral laws lack coordination mechanism; Significant sectoral overlap in responsibilities and legal inconsistencies between texts and policies	Moderate	Moderate
Conflict between legal norms and context	National	Legal framework and norms do not reflect community conditions and context; state's laws compete with customary rights and practices governing forest and land sectors	High	Moderate
Entrenched elite interests	National	Elites benefitting from past land grants and concessions desire to maintain status quo	High	Low
Legal framework lacks stakeholder inclusion	National	Laws define community rights on basis of ethnicity, excluding large parts of the population organized more in terms of neighborhood/locality and land-use	High	High
Women's rights are severely constrained	National	Women's rights are very unequal in practice due largely to customary biases; legal measures are not focused on enforcing equality. Tenure reform is implemented independently to the reform of the family code	Low	Moderate
Context of fragility; potential for reforms to incite violence	National	The state is still, in many respects, in the process of formation; persistent armed conflict in areas of the country imperil rights and weaken the government; land is a root cause of many conflicts	High	Low
REDD+ initiatives lack resources and may provoke new conflicts	Mai-Ndombe	Interest in the REDD+ interventions is high but the carbon revenues may be lower than the expectations. This may provoke new conflicts and distrust in formal processes	High	High
Conflicts persist	Mai-Ndombe	Conflicts between communities and concessionaires and between communities may continue if the sources of insecurity are not addressed	High	Moderate

## Country Profile

# MADAGASCAR

### COMMUNITY FOREST TENURE IN MADAGASCAR AT A GLANCE

Total area under communal ownership (million ha) / % of national territory under communal ownership	Data not available
Forest area under communal ownership (million ha) / % of nation's forests under communal tenure	Data not available
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» The Ministry of Environment and sustainable development (MEDD) and the Regional Directorate of the Environment and Sustainable Development (DREDD).</li> <li>» Ministry of Environment, Ecology, and Forests (MEAF)</li> <li>» Ministry of Territorial Planning and Public Works (MATP)</li> <li>» The Madagascar National Parks</li> </ul>
FCPF REDD+ Jurisdictions:	SAVA, Atsinanana, Analanjirifo, Sofia, Alaotra Mangoro
FCPF REDD+ Advancements:	ERPA signed (Feb. 2021)

### COMMUNITY TENURE CATEGORIES IN MADAGASCAR<sup>102</sup>

<p><b>Communautés de base agréées avec contrats de gestion:</b> This regime applies to natural forests, public forests, and private forests under the jurisdiction of the Ministry of Forests.</p> <p>Under Madagascar's policy of <i>Transfert de Gestion des Ressources Naturelles Renouvelables</i> (Transfer of Natural Renewable Resources Management) the state delegates limited tenure and sustainable use rights to a legally recognized community (Communauté de Base).</p>	<p><b>Access:</b> Yes, Under GELOSE,<sup>103</sup> contracts transfer the management of forest resources to communities. The contracts include usage rights (Art. 4 Decree N° 2001-122). The conditions of use are dependent on the terms of the contract concluded by the community (Art.1 Law n° 96-025, Art. 1 Decree N° 2001-122).</p> <p><b>Withdrawal:</b> Timber: Yes; Non-Timber Forest products: limited for subsistence purpose, but not allowed to, under any circumstances, use the gathered products for commercial purposes or exchange (Art.15 Decree n° 2001-122 and Art. 24 Decree n° 98-781).</p> <p><b>Management:</b> Yes, Contracts have been established to allow communities to have managements rights. Once this contract is concluded, management rights are guaranteed. (Art. 4 Decree N° 2001-122; Art.1 Law n° 96-025, Art. 1 Decree N° 2001-122).</p> <p><b>Exclusion:</b> Case-by-case, Exclusion is dependent upon the terms of the statute of the local community, its rules of procedures and its Dina (Art.15 Decree n° 2000-27).</p> <p><b>Alienation:</b> No</p> <p><b>Due Process and Compensation:</b> Yes, similar to contract. If the state revokes contract communities have the right to receive compensation, unless termination occurred because of contractual violation by community.</p> <p><b>Duration:</b> 3 years, renewable (10 years for renewal)</p>
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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Madagascar is one of eight biodiversity “hotspots” in the world,<sup>104</sup> and considered a priority conservation area due to a disconcerting number of species facing extinction. Despite broad biodiversity conservation efforts, ecosystems in the country’s eastern forest are so fragmented and degraded that many native large animal species have already been lost. Madagascar’s direct drivers of deforestation include small-scale agriculture, energy production, artisanal and illegal mining, forest harvesting, and livestock practices. With a population of about 23 million, more than two-thirds of the population live in rural areas with high poverty rates and livelihoods dependent on forests and natural resources.

Madagascar has a pluralistic legal framework governing land. It has a “formal land tenure system that recognizes individual freehold tenure under formal law and community-based customary land tenure systems” (USAID Madagascar Country Profile: 2020).<sup>105</sup> The systems are governed by national-level, formal law and community-based rules that regulate land access, acquisition, and use.<sup>106</sup> Under formal law, landowners can acquire either land titles or land certificates. Though land titles and land certificates are acquired through different processes, both convey private ownership and provide security of tenure.<sup>107</sup>

In the past, the legal status of communities, their right to self-determination, and their relationship to land and place were formally recognized with the 1973 Ordinances 73-009 and 73-010. Pursued in the context of national decentralization efforts, the transfer of land and natural resource management responsibilities to dedicated community structures, known as “Fokonolona” (popular assembly) implicitly recognized the historical role of community-based culture in Madagascar, and its reliance on the collective management of the commons (i.e., natural resources, pastures, fisheries, etc). However, the legal underpinnings of the Fokonolonas have yet to be effectively implemented. Most of the Malagasy experts and lawyers agree that Ordinances 73-009 and 73-010 were undermined by recent legislation on decentralization (laws in 2014 and 2015). *The rights to hold and own communal land no longer legally apply in Madagascar.*

Even if in most of the rural and remote areas, communities believe they legitimately own land, the forest law 97-017 and the land law 2008-014 (on State Private Domain) are explicit that forest and vacant land are owned by the state. According to civil society leaders, limited recognition of community land rights is principally rooted in the struggle for political power. Granting rights to communities ultimately diminishes the authority of the central government to determine land use priorities, resulting in significant public and private land use pressures and uncoordinated land use planning that undermines all efforts to manage available resources equitably, efficiently and effectively. And when it comes to recognizing community land rights, state officials from the various land use departments are by far the most distrustful and counterproductive actors in the central government apparatus.

Under customary law, land in Madagascar is perceived as the land of the ancestors, granted to a community as their sacred heritage. In some communities, individual tenure is considered foreign or even taboo. Madagascar is one of the first countries in the southern hemisphere to have put in place a legal framework for community-based natural resources management, with the GELOSE (gestion locale sécurisée) law (law 96-025) in 1996. The GELOSE promotes the transfer of management of a range of different natural resources to local communities. This was followed in 2001 by a forest-specific decree known as gestion contractualisée des forêts or GCF (decree 2001-122). As with other legal precedents, the GELOSE law has never become fully functional as it was never complemented by the required implementation decrees to achieve this dual objective of transfer of management of natural resources and land tenure security.<sup>108</sup> Under GELOSE, decrees 98-610, 98-781, and 98-782 have been used to gain relative land security inside territory through management access and transfer.

Under Madagascar’s formal law, all forests except for those on titled land are state property, leading to overlapping land claims between customary rights holders and both private (e.g. agroindustry) and public (e.g. protected areas) interests, investments or initiatives. Villagers do not have the right to access and use forests without state permission. Formal law is at odds with customary beliefs and practices, which give local communities the right to use

the forest and forest products. Madagascar's community forest management legislative framework and programs have been making efforts to harmonize the competing principles regarding use of forest resources.<sup>109</sup>

Under formal law, both women and men have equal rights to land and natural resources.

The recognition of community-based tenure rights and land management responsibilities are recognized in Article 152 of the constitution. Only collective land use right is recognized in the context of a natural resources' management transfer (article 41, law 97-017). Malagasy Law 2015 – 005, revised Code on Protected Areas, may provide legal grounds to established community-established protected areas, where the community is appointed as “manager” (rather than owner).

Throughout the country, most land rights are held under customary tenure, which tends to be clearly defined and understood, and has social legitimacy.<sup>110</sup> In 2005, Madagascar embarked on a land reform to decentralize land administration to the commune-level, introduce land certificates, and reverse the presumption of state ownership of land known as the National Land Program. Despite initial progress, the reform effort stalled in 2009 following a coup d'état. Under this National Land Program, many land administrative functions were decentralized to the commune level. Communes can establish permanent Local Land Offices (LLOs), which manage the local land recognition and registration process including issuing land certificates, recording transactions, and maintaining the Local Plan for Land Occupation (PLOF). Local Land Offices are not in charge of land titling, however, that is the jurisdiction of the State Land Administration Services. In contrast to the Torrens system, which takes up to six years and costs around \$500, the land certification process takes 6-18 months and costs \$15 or \$30 for rural or urban land, respectively. By 2018, at least 510 LLOs had been established and 250,000 land certificates had been issued across the country.<sup>111</sup> The cost of the land certificate although lower than the land title remains not very accessible for the majority of community members, and has proved to be ineffective in the context of competing land claims.<sup>112</sup> The number of LLOs has steadily increased; however, these offices are challenged by weak technical and training support and poor funding,

which affect the success of the land reform.<sup>113</sup> The laws developed in the scope of the National Land Program also include the management of forest land, which is a pathway for legitimacy for securing and managing forest land. Collective land certification is possible, provided the community is formally registered as a legal entity (i.e. an association or a COBA). Neither the Fokonolona, nor an association of traditional pastoralists can apply for a collective land certification under this program.

The Community Based Forest Management or GELOSE (gestion locale sécurisée) law (law 96-025) promotes the transfer of management of a range of different natural resources to local communities. It was reported in a Community-Based Forest Management Impact Evaluation in 2015 that regulatory gaps and internal contradictions present in other legal texts on forest areas cause it to not deliver on its goals to (1) improve local community livelihood and (2) prevent deforestation. There is a lack of consistency between different sectoral laws and policies and the community-based forest management policy. Law enforcement and the rule of law present substantial weaknesses both at the local and at the national levels. These reasons suggest that the problems may lie more with the implementation aspects of the community-based forest management policy. Protected forest areas have had some success at reducing deforestation; however, their negative impacts on the livelihoods of local communities, such as access to forest resources undermined their effectiveness and legitimacy.

Operating through the GELOSE law no. 96, is Decree 98-610 relating to Relative Land Securing (SFR) adopted by the Malagasy government on August 13, 1998. This decree establishes a “*procedure consisting in the overall delimitation of the land of a local community of beneficiary base of the renewable natural resources management transfer contract as well as the occupations included in this land.*”<sup>114</sup> The decree links access to resources with access to land. Under SFR decree, rights agreed between the parties are not property rights, but rights of use. The SFR is a procedure that determines the right of ownership of a local community based on the benefits of the transfer contract, management of renewable natural resources and occupations comprising the assembly of its land. It can be used as an initial step to land registration.<sup>115</sup>



Madagascar also has ambitious goals for restoring its degraded forests under the Bonn Challenge. However, a lack of clearly defined and formalized rights for land use and ownership inhibits willingness/ability to invest in forest restoration.<sup>116</sup> Work in the northwestern Madagascar (Boeny region)<sup>117</sup> found that tenure issues and challenges varied between land categories:

- » In the forests (dense dry, and *raffia* palm swamps) there is pressure to convert the remaining forests to either residential or agricultural use. In forests under VOI control, the VOIs are unable to fully prevent outsiders from converting the forest edges to cropland due to corruption and a lack of political will at levels beyond VOI control. In forests not under VOI control, illegal timber harvesting and conversion to cropland continue “as usual”. In *raffia* stands (*ala rofia*) – which under national forest law are communal resources whose privatization is prohibited and harvesting strictly regulated – appropriation by private individuals is depriving community members of their use rights. According to local leaders, this is because *raffia* stands are not explicitly designated as resources belonging to the commune and therefore, cannot be withheld from individuals.
- » In the savannas, reforestation has emerged as a way for migrants to claim land through the state, thereby bypassing traditional authorities. While tenure security was strengthened for migrants, there is a long-term risk of conflict as grazing and upland crop land availability declines.
- » In the bottomlands, women are working to obtain primary rights to land. Having these rights provides a greater incentive for them to plant trees since secondary rights holders are typically prohibited from doing so.
- » In common to all, the main sources of tenure insecurity for forests are the undermining of local forest management groups’ enforcement efforts by higher levels, and tensions between the Forest Service and communes over allocation rights to forested lands.

Since the Durban Vth World Parks Congress in 2003, Madagascar has increased its number of protected areas from 47 to 122 which together form the System of

Protected Areas (SAPM). These protected areas are comprised of one natural reserve, 28 natural parks, two natural monuments, 23 habitat/species management areas, 39 protected landscapes, and 17 protected areas with sustainable exploitation of natural resources. While conservation of the forests has been greatly promoted by the country, often forest dwellers and local communities are barred from their resources in the name of conservation. The classification of protected Forest areas is governed by Law No. 2015-005 amending the Code for Management of Protected Areas (COAP), which established a system of protected areas and simplified the legal process for protected area creation. Under this law, communities, nongovernmental organizations, and the private sector can manage protected areas. The establishment new protected areas require the involvement of local communities and authorities, as well as an environmental and social impact assessment. Madagascar’s forests and protected areas are also governed by the country’s broader environmental policy and legislation, such as the National Charter for Environment (Law 90-202), which established the principles for the country’s 2010 National Environmental Policy Declaration.

Public consultation and local community participation have been key features of both the National Land Program and Community-Based Resource Management. Prior forest interventions have been largely unsuccessful due to lack of community engagement. Under Madagascar’s constitution, land can only be expropriated for public use and is conditional upon prior payment of fair and prior compensation. However, some contend that the government has expropriated land for private interest, particularly for multinational mining companies. It appears that sometimes conservation priorities are placed above local communities. In a focus group for a World Bank Impact Evaluation of Community-Based Forest Management laws, respondents reported that the objectives of the more conservation-oriented forest administration are not completely aligned with those of the Municipality, which represents not just communities living near the forest but all communities in the municipal territory (including those in agricultural areas and urban areas).

At the local level, community-led enforcement may be ineffective when dealing with agents that are external to the



## BOX: KEY LEGISLATIVE AND LEGAL ENACTMENTS SUPPORTING LOCAL COMMUNITY RIGHTS TO LAND AND NATURAL RESOURCES

**Gestion locale sécurisée (GELOSE) Law No. 96-025**, or Community Based Forest Management law, promotes the transfer of management of a range of different natural resources to local communities

The classification of protected Forest areas is governed by **Law No. 2015-005** amending the Code for Management of Protected Areas (COAP), which established a system of protected areas and simplified the legal process for protected area creation. Under this law, communities, nongovernmental organizations, and the private sector can manage protected areas

**National Land Program** (also includes management of forest land) 2005 Letter for Land Policy focused on four tasks:

1. restructuring and modernizing the land administration system;
2. improving decentralized land management by creating Local Land Offices authorized to issue and manage land certificates according to locally established procedures at the commune-level;
3. updating land legislation to incorporate the principles of decentralized administration and to formalize local land holdings; and
4. establishing a national land tenure training program to build local capacity.

In 2015, a new 15-year Letter for Land Policy was adopted, but this has not led to new legislation

Madagascar's forests and protected areas are also governed by the country's broader environmental policy and legislation, such as the **National Charter for Environment (Law 90-202)**, which established the principles for the country's 2010 National Environmental Policy Declaration

2005, Law No. 2005-019 classifies land as state or private, delineated land tenure types, and provided procedures for land registration. The law specifically recognized the rights of individuals and groups to unregistered land, which had previously been considered state land. It also lacks any provisions for titling or certifying collective land ownership.

Law n°2006-031 establishes a procedure for recognizing community rights to customarily held land under this regime. However, this regime does not apply to forests, protected areas, and lands where a GELOSE contract has been concluded (article 38 Law n°2005-019).

Bill proposed by MATP in 2020 intended to address security and management of community possession (forest, pasture-land, agricultural land). This is ongoing and the legal identity of the Fokonolona is at the center of national debates.

Vondron Olona Ifotony (VOI) – Local Community Association, or to the community altogether. At the sub-national and national levels, the problems of weak rule of law, corruption in the administration and the judiciary, and poorly equipped law enforcement agencies are more common.

Communities usually have clearly defined land tenure rules and processes for resolving local conflicts between private persons, and most land disputes are resolved locally and informally. Community-based forest management contracts include an agreement between individuals from the local community and the administration, clear terms of use of the resource, land tenure rights and the

support of a mediator and of NGOs. The process starts with the creation of a local natural resources management group VOI. The VOI operates according to a set of rules (Dina). Once created, the VOI can request the transfer of management of a given resource from its legal owner, be it the State or the local authority. The contract is signed by three parties: (i) the VOI; (ii) the owner of the resources, be it the State or the Municipality (in the case of forests, typically the forest administration); and (iii) the Municipality (Commune), which is the most decentralized institution with elected leaders. The typical forest Community-based natural resource management contract is often established with support from NGOs and requires the expertise of an environmental mediator, who would

ensure that the needs and objectives of all stakeholders involved in the negotiations are given equal weight. Under Madagascar's constitution, land can only be expropriated for public use and is conditional upon prior payment of fair and prior compensation.

Complex procedures and the requirement to travel to regional courts and seek legal advice can deter private persons from pursuing resolution to disputes with the state. Disputes that make it into the court system take a long time to decide or may never be decided; most judgments are not adequately enforced.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

There is inertia within many programs in Madagascar that are currently working towards better securing private tenure and better operationalizing collective tenure in legal code.

There is a focus on restoring the recognition of the Fokonolona as a legal body. There is a so-called "3rd Regime" of land law, which has faced delays in ratification, that would recognize local community rights to collective tenure. It

would also address resource rights and access, which is currently a gap in law. Recent pilot experiences have started to formally register land under natural resources management transfer to local communities (as demonstrated with COGESFOR experiences). There is momentum, in some cases, where local CSOs are collaborating with Fokonolona networks to map out community lands, natural resources and waters, utilizing GEF Small Grant support.

Donors and actors could commission studies to look into how community management can be implemented under the current legal framework. This could include conducting studies with the Madagascar National Parks in the scope of the establishment of community-managed protected areas.

World Bank projects are mainly focused on titling rural property rather than collective tenure. The land component of an ongoing WB agriculture project ends in 2022, with a goal of issuing 2 million certificates. There has not been a significant effort within donor projects to address collective rights since the GELOSE legal framework was developed. Forest land tenure remains a persistent issue that recent legislation has not really addressed. Going forward, donors and other actors have a key opportunity to support the development of the bill on land regarding community-based resource management.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>118</sup>	Location of investments	Timeframe of investments <sup>119</sup>
Capacity building and support for decentralization efforts to expand local land offices	Expand and strengthen Local Land Offices under the National Land Program with the goal of decentralizing land administration and increasing land certifications. This is part of the Land component of an ongoing WB agriculture project, which ends in 2022 and has a goal of issuing 2 million certificates. This work should be further expanded.	National Land Program, Government of Madagascar	Large	National	Long-term
Better operationalize collective tenure in the legal code	Support the Government of Madagascar in implementing the progressive legislation on GELOSE and reforms actively in progress.	Government of Madagascar	Moderate	National	Medium-Term

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>118</sup>	Location of investments	Timeframe of investments <sup>119</sup>
Support legislation for legal recognition of the Fokonolona	Restore the recognition of Fokonolona as a legal body. This involves the financing of legal texts development/ committee of lawyers.	Government of Madagascar: Ministry of Interior and Decentralization, Ministry of land, Ministry of environment	Small/ Moderate	National	Short/Medium Term
Strengthen protections and enforcement for women's land rights	Support gender integration into the National Land Program by strengthening the capacity of local authorities and LLOs to support land titling and certification for women.	National Land Program, Government of Madagascar,	Moderate	National	Long-Term
Strengthen enabling conditions for the advancement of community-based tenure rights	Support studies, dialogues and advocacy that demonstrate and call attention to the importance of communities on the ground.	Some support from GIZ, USAID and the EU, but more is needed to leverage support from the international donor community	Small but sustained	National	Long-term
Review current community land management approaches	Commission a review / assessment of designated community areas to showcase benefits / importance of community land management approaches.	Government of Madagascar, CSO, Local Communities	Small	National	Short Term

## STATUS OF LAND AND FOREST RIGHTS<sup>120</sup>

Key Element of Tenure Security <sup>121</sup>	Country Findings	Opportunities for policy/action/ investment
1. Legal frameworks for tenure rights	Madagascar has a formal land tenure system that recognizes individual freehold tenure under formal law and community-based customary land tenure systems, providing de facto precedence to private ownership in most circumstances. The systems are governed by national-level, formal law and community-based rules that regulate land access, acquisition, and use. Under formal law, both women and men have equal rights to land and natural resources.	<ul style="list-style-type: none"> <li>» Support for reforms that are actively in progress to better codify collective tenure recognition.</li> <li>» Support for recognition of collective forms of tenure.</li> <li>» Where Indigenous tenure systems prevail, develop a tenure security approach that respects a degree of community authority, and both supports Indigenous land markets and guarantees that land is not transferred to "outsiders."</li> <li>» Re-design land certificates to make them adaptable to customary collective tenure situations where there is an exclusive right to land but which does not include the right of alienation.</li> <li>» Address a key legal gap surrounding rights to forest (i.e. do the trees belong to the landowner? Can forests be appropriated?)</li> </ul>

Key Element of Tenure Security <sup>121</sup>	Country Findings	Opportunities for policy/action/investment
2. Implementation of legal recognition.	Under Madagascar's formal law, all forests except for those on titled land are state property. Villagers do not have the right to access and use forests without state permission. Formal law is at odds with customary beliefs and practices, which give local communities the right to use the forest and forest products. Madagascar's community forest management legislative framework and programs have been making efforts to harmonize the competing principles regarding use of forest resources. The Rights and Resources Initiative estimates that 37.7m ha (64.8 percent of national territory) of IP and LC lands are still not legally recognized. <sup>122</sup>	Support reforms are actively in progress to operationalize statutes to recognize collective tenure, including the issuance of land certificates.
3. Appropriate regulations for land and resource management	The Community Based Forest Management, or GELOSE (gestion locale sécurisée) law (law 96-025) promotes the transfer of management of a range of different natural resources to local communities. It was reported in an Community-based Forest Management Impact Evaluation in 2015 that regulatory gaps and internal contradictions present in other legal texts on forest areas cause it to not deliver on either of its two goals: to improve local community livelihoods and prevent deforestation.	Strengthen rights of secondary users to allow them to benefit from tree crops
4. Effective support from responsible government agencies	Greater political will for decentralization: The establishment of new protected areas require the involvement of local communities and authorities, as well as an environmental and social impact assessment. Public consultation and local community participation have been key features of both the National Land Program and Community-Based Resource Management, and prior forest interventions have been largely unsuccessful due to lack of community engagement. It appears that sometimes conservation priorities are placed above the well-being and rights of local communities. In a focus group for a World Bank Impact Evaluation of Community-Based Forest Management laws, respondents reported that the objectives of the more conservation-oriented forest administration are not completely aligned with those of the Municipality, which represents not just communities living near the forest but all communities in the municipal territory (including those in agricultural areas and urban areas).	Support decentralization through expansion of local land offices
5. Empowered and inclusive Indigenous and community governance	While the state is the owner of all forests, co-management between the state and local communities was enabled by the 1996 Gestion Locale Sécurisée (GELOSE) Law (Law No. 96-025), through which Madagascar became one of the first countries in the southern hemisphere to establish a legal framework for community-based natural resource management. Decrees have not been made to broadly implement the GELOSE law.	<ul style="list-style-type: none"> <li>» Improve legal definition of Dina (informal pact in each community)</li> <li>» Capacity building support for VOIs</li> <li>» Measures aimed at increasing downward accountability on the part of government officials</li> <li>» Engagement of fokontany and traditional authorities in land allocation decisions.</li> <li>» Assistance with commune land-use plans (Schémas d'Aménagement Communal, or SACs) and their revisions</li> <li>» Development of local agreements that map out grazing and reforestation areas</li> </ul>

Key Element of Tenure Security <sup>121</sup>	Country Findings	Opportunities for policy/action/investment
6. Systems for recording community forest tenure rights	Under the National Land Program, many land administrative functions were decentralized to the commune level. Communes can establish permanent Local Land Offices (LLOs), which manage the local land recognition and registration process including issuing land certificates, recording transactions, and maintaining the Local Plan for Land Occupation (PLOF). Land certification is on demand and based on public, contestable procedures.	
7. Enforcement of tenure rights	At the local level, community-led enforcement may be ineffective when dealing with agents that are external to the VOI or to the community altogether. At the sub-national and national levels, the problems of weak rule of law, corruption in the administration and the judiciary, and poorly equipped law enforcement agencies are more common.	Communities should be entitled to benefit sharing from carbon financing regardless of legal status
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Community-Based Forest Management contracts include an agreement between individuals from the local community and the administration, clear terms of use of the resource, land tenure rights and the support of a mediator and of NGOs.	
9. Conflict and dispute resolution	Communities usually have clearly defined land tenure rules and processes for resolving local conflicts between private persons, and most land disputes are resolved locally and informally. Complex procedures and the requirement to travel to regional courts and seek legal advice can deter private persons from pursuing resolution to disputes with the state.	

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>123</sup>

Project Name	Location	Financier	Implementer	Budget (millions, US\$)	Duration
Madagascar Emission Reductions Program in Atiala-Atsinanana	Atiala-Atsinanana	World Bank	Min. Env. & SD	\$50	Pipeline
Madagascar Agriculture Rural Growth and Land Management (CASEF) - Additional Financing	Rural, National	World Bank	Ministry of Agriculture	\$52	2019 - TBD
A landscape approach to conserving and managing threatened biodiversity in Madagascar	Subnational, National (focus on Atsimo Andrefana)	United Nations Development Programme; Government of Madagascar, Global Environment Facility	Ministry of Ecology, the Environment and Forest (MEEF)	\$50	2015-2019

Project Name	Location	Financier	Implementer	Budget (millions, US\$)	Duration
Responsible Land Policy in Madagascar (PROPR)	8 municipalities in the Boeny region in Northwest Madagascar	GIZ	A range of non-governmental organizations (e.g. Transparency International), research institutions, ministries of environment, agriculture and the Interior in Madagascar	€ 5.5	2017-2021
Soil Protection and Rehabilitation of Degraded Soil for Food Security (ProSoil)	Mainly Boeny region	GIZ	Ministry of Ecology, the Environment and Forest (MEEF)	€ 8	2018- 2022

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Coordination issues with donors	National	There are multiple donors working independently on land and forest rights issues with competing priorities	Low	Low
Bottlenecks in government to give the Fokonolona legal recognition	National	The Ministry of Interior and Decentralization is propelling the process of restoring legal recognition for the Fokonolona , and initiatives from both ministries of land and environment are perceived as being hindered by the inertia on this issue.	Medium	Medium
Large-scale land acquisitions which displace community forest rights	National	“Daewoo” type large scale land acquisitions may create conflict with local communities and social unrest, which can create human rights issues at local levels and even disrupt national political economy.	High	Medium
Illegal deforestation	National	Illegal deforestation reduces the ability of communities to leverage rights for livelihood and conservation aims; may undercut goals of REDD+.	Medium	High
Exclusive focus on carbon in environmental payments	National	Experience in some projects has shown that exclusive focus on carbon payments can skew community resource management and livelihoods; may fail without better legal framework for carbon ownership and benefit-sharing.	Medium	Medium
Capacity for agro-forestry	National	Programs for community management assume feasibility of a high degree of capacity development for agro-forestry and value chains, such as linking vanilla to agro-forestry.	Medium	Medium
Climate change	National	Changes to growing cycles, soil fertility and water availability may make community forest management, conservation practices and agro-forestry more difficult, increasing the cost of forest tenure reform and contributing to continued agricultural expansion and deforestation.	Low	Low

## Country Profile

# REPUBLIC OF CONGO

### COMMUNITY FOREST TENURE IN THE REPUBLIC OF CONGO AT A GLANCE

Total area under communal designation (million ha) / % of national territory under communal designation	0.4 <sup>124</sup> / 1.3%
Total forest area under communal designation (million ha) / % of total forest area under communal designation	0.0 <sup>125</sup> / 0.0%
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Ministry of Forest Economy (MEF)</li> <li>» Ministry of Planning</li> <li>» Ministry of Agriculture and Livestock</li> <li>» Ministry of Mining and Geology</li> <li>» Ministry of Land Use Planning</li> <li>» Centre for Non-Timber Forest Products (CVPFNL)</li> </ul>
FCPF REDD+ Jurisdictions:	Sangha and Likouala Departments (12.4 million ha)
FCPF REDD+ Advancements:	ERPA not yet signed

### COMMUNITY TENURE CATEGORIES IN THE REPUBLIC OF CONGO<sup>126, 127</sup>

Indigenous Populations' Land: Formalizes Indigenous Peoples' land and use of natural resources. Guarantees collective subsistence rights and commercial exploitation and utilization rights.	<p><b>RRI Tenure Type:</b><sup>128</sup> Designated</p> <p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Yes, commercial and subsistence</p> <p><b>Management:</b> Yes, within limits of law</p> <p><b>Exclusion:</b> Limited, only consultation before development</p> <p><b>Alienation:</b> No</p> <p><b>Due process and Compensation:</b> Yes, as provided by law; upon compulsory acquisition, entitled to compensation as if private property<sup>129</sup> (but lacking legal description of public purposes)</p> <p><b>Duration:</b> Unlimited</p>
Forests of Communities and Other Local Collectives with Recognized Use Rights (Des forêts des communes et autres collectivités locales dans laquelle les droits d'usage sont reconnue)	<p><b>RRI Tenure Type:</b> Designated</p> <p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Yes, subsistence NTFP and timber</p> <p><b>Management:</b> Yes</p> <p><b>Exclusion:</b> No</p> <p><b>Alienation:</b> No</p> <p><b>Due process:</b> Yes</p> <p><b>Duration:</b> Unlimited</p>



## DE FACTO MECHANISM FOR LEVERAGING LIMITED COMMUNITY USE-RIGHTS

<b>Community Development Zone<sup>130</sup> (SDC - <i>Série de Développement Communautaire</i>):</b> Also referred to as Community Development Areas. As part of forest concessions, differs widely in details between concessions. Forest concession management plans detail use-rights. Legal personality of community is not necessary; SDCs are automatically created by forest concession management plans as companies are obliged to designate SDCs around villages.	<b>Access:</b> Yes <b>Withdrawal:</b> Yes, for subsistence use <b>Management:</b> Limited; decisions are by multi-stakeholder body of which communities are but one part <b>Exclusion:</b> n.d. <b>Alienation:</b> No <b>Due process:</b> n.d. <b>Duration:</b> 10-20 years
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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

The Republic of Congo has historically had a low rate of deforestation (0.052 percent annually, between 2000-2012) with 23.5 million hectares of forest covering 69 percent of its national territory. As the country tries to diversify its economy away from hydrocarbons, REDD+ and forest protection present a significant opportunity, while alternatives like mining, unsustainable logging and agriculture threaten these same forests. The Republic of Congo has outlined in its FCPF Emission Reduction Progra<sup>131</sup> several approaches to maintaining low rates of deforestation and forest degradation within this shifting context:

- » Engaging forest concessionaires to conduct reduced impact logging (including incentives for those already practicing sustainable forest management);
- » Avoiding conversion of high conservation value forests to palm oil by contractual agreements; and promotion of RSPO (Roundtable for Sustainable Palm Oil) standards and reduced impact planning in mining concessions;

Work with communities to improve livelihoods, specifically targeting cocoa production, subsistence agriculture, smallholder palm oil and Payment for Environmental Services for individuals and communities that protect forests;

- » Improved protected areas management and alternative income generating activities; and,
- » Enabling activities such as improved governance and synergies with the Forest Law Enforcement, Governance and Trade (FLEGT) process, land use planning, and value chain development for agricultural products.

The legal framework pertaining to natural resources and land is relatively progressive and demonstrates the government commitment to reforming these sectors over the past decade. Currently in the process of revision/review are both major environmental and agricultural laws. About a decade ago, Law No. 5 (2011) introduced a legal framework for Indigenous Peoples' rights (i.e., Pygmy Peoples), including guarantees for collective access and use rights for subsistence activities and the right to profit from commercial exploitation of lands and natural resources.

Further, the law establishes a type of collective ownership ("Indigenous Population's Land"), formalizing customary tenure, and protects IP rights that have not been registered. However, the law lacks implementing regulations or specific procedure to claim rights, and it falls upon other legal enactments (i.e., Planning Law (2014) and Forest Code (2020)) to operationalize any significant upgrade in IP and LC rights.<sup>132</sup> While delimitation of IP lands is theoretically possible from the law, it is considered too complex and not carried out in practice.<sup>133</sup> An additional limitation is that presently there exist limited studies and analysis to understand the extent of IP geographic occupation and use of resources, under either legal or customary provisions.

Regarding this, an October 2019 mission of United Nations Special Rapporteur on the rights of indigenous peoples concluded:<sup>134</sup>

- » The rights of Indigenous Peoples to their lands, territories and resources are still not respected and protected despite legal recognition and protections giving them – both collectively and individually – the rights to own, possess, access, and use the lands and natural resources that they have traditionally used or occupied.

- » That the law facilitates the state to delimit these lands on the basis of Indigenous customary rights, and to ensure legal recognition of the title according to customary rights.
- » That Indigenous Peoples have yet to receive any land titles, while at the same time, lands they use and occupy are being provided as concessions to logging companies; declared as forest reserves, National Parks or conservation areas; and, in a number of cases, Bantu communities are expanding into traditional lands, forcing Indigenous occupants to abandon their lands and settle on the margins of Bantu villages, or go deeper into the forest.
- » Loss of access to traditional territories for livelihood and subsistence has worsened over recent years from the awarding of logging concessions and declarations of conservation or forest reserve areas.

Recommendations from the mission included the need to (i) develop and implement new procedures for demarcating and registering lands in accordance with Indigenous Peoples' customary rights and tenure, and new mechanisms for identifying and securing specific rights on natural resources; and (ii) amend the country's National Action Plan (2019-2023) to include the recognition of Indigenous land rights as a priority.

The Rapporteur noted the Government's official assurances that the political will to implement the law and recognize Indigenous land rights was strong but that the central challenge in doing so was a lack of resources.

During mid-2020, the Forest Code was passed by the Congolese government after years of CSO/international NGO partnerships to draft the law.<sup>135</sup> While implementation has not yet begun, several major changes have been introduced to the forest sector which have implications for IP and LC tenure security and livelihoods:

- » FPIC is enshrined in law for the first time, to ensure IP and LC involvement in forest governance;
- » A new community forestry scheme has been introduced as a mechanism to grant communities forest management rights;
- » Greater CSO/community involvement in forest monitoring, forest management plans and adjudi-

cating forest concessions, and benefit-sharing can be directly negotiated by communities within forest-concession contracts; and,

- » Provisions that support REDD+ project development and provide for carbon ownership.

All of these laws governing natural resources and land are attempting to clarify rights and introduce statutory rights. However, despite its progressive nature and bold ambitions, the legal framework governing natural resources and land almost universally lacks regulations for implementing. Development of these procedural laws will be critical to the success of the overall legal framework at reducing conflict and securing rights for IPs and LCs. Implementation remains an ongoing challenge due to budgetary gaps and the persistent bias in the legal framework toward industrial exploitation of resources.<sup>136</sup>

There are currently no community forests in the Republic of Congo, in the sense that ownership, management and control are determined by the community. Local communities have special use-rights in the Non-Permanent Forest Estate, including subsistence and cultural uses.<sup>137</sup> A community forest modality is included in the recently passed Forest Code (2020) but, as of yet, it is unclear in how it would be implemented. In practice, the dominant mechanism for community forest access and use-rights is the Community Development Zone (SDC - *Série de Développement Communautaire*). Around half of northern Congo<sup>138</sup> is comprised of 17-year forest concessions, with three companies holding concessions of over one million hectares.<sup>139</sup> Companies with forest concessions are required to allocate SDCs for local communities to access, harvest and use. SDCs are drawn up by companies in their forest concession management plans based on the presence and population of local communities. These community development areas allow customary activities such as subsistence use of natural resources and limited commercial use of resources, managed by a multi-stakeholder body which has a degree of community representation. The concessionaire is required to pay into a Local Development Fund which is intended to finance micro-projects of community interest.<sup>140</sup>

The level of participation and capacity of communities in SDCs varies considerably. The multi-stakeholder body

(*conseil de concertation*) that manages the SDC and is composed of representatives of the local administration, forest concession company, NGOs and the local communities. Decisions are ideally adopted by consensus, though in cases where this cannot be reached a 2/3 majority is sufficient. In reality, representation and decision-making by communities are problematic. The councils are usually dominated by local authorities, and community representatives may be village chiefs who are effectively appointed by the state.

Though SDCs do legally ensure some limited rights for local communities, there are several issues with the model (beyond limited community representation and autonomy) that differentiate it from community forestry modalities elsewhere. SDCs must be part of a forestry company's concession – they cannot exist due to the initiative and effort of the community alone. The use-rights associated with the SDCs confer a limited sense of community ownership and are spatially limited in that SDCs are delineated based on a formula taking into account agricultural uses, not traditional extensive activities such as hunting or other self-determined uses. Moreover, this delimitation does not always coincide with areas that are customarily utilized.<sup>141</sup> While nearly all concessions are ending or in the process or renewal, it is not clear that there is a systematic effort underway to address these shortcomings or develop adequate planning procedures. However, the recently adopted Forest Code (2020) may improve on several of these issues (i.e., benefit sharing negotiated by communities, greater CSO role, FPIC), and it remains to be determined what potential the newly established community forestry scheme holds for forest-dependent communities.

Major issues constraining efforts to support communities and address deforestation is the lack of natural resource planning and effective intersectoral coordination. While government land use planning committees to adjudicate overlapping land-claims have been drawn up in decrees, in practice, these have not been implemented and coordination to prevent overlaps remains vastly insufficient between sectors. The National Forest Domain (Permanent Forest Estate) has not been completely defined, constraining efforts to protect high conservation value forests. High-level political will is needed to reconcile different land uses and prioritize economic and environmental ob-

jectives. As such, the development of an ambitious national land use plan is a priority for the government and is currently being supported by the Central African Forest Initiative (CAFI).<sup>142</sup> This effort includes land use mapping, identification of overlapping uses and regulatory work to assist with adjudicating conflicts and overlaps.

Critically, intersectoral coordination for national and provincial institutions must be improved through capacity building.<sup>143</sup> Additionally, to advance community and IP rights, lands important for local development and customary use should be delineated in any large-scale zoning exercises.<sup>144</sup> According to CSO representatives however, the “*Plan d’affectation nationale des terres*” is mired by overlapping claims between mining, forest, and conservation sectors, and offers no legal remedy for the rights of communities, including the rights of IPs to pursue traditional lifestyles anchored in hunting and gathering.

Women still face significant obstacles to participation in government. For over a decade the Ministry of Promotion of Women and Women's Integration in Development has been in place, and a 2018 law (No. 14-2018) was passed to implement the Advisory Council of Women tasked with integrating women in development. However, despite attempts at mainstreaming gender in forest policies and government, effects have been limited with a significant minority of women in government policymaking positions and little progress toward representation and participation in forest policymaking.<sup>145</sup> Beyond government and policy, equal inheritance is not recognized for women, daughters and widows, and at the community level, customary rules continue to govern access to land and resources.<sup>146</sup>

Safeguards for communities are stronger in the 2.5 million hectares of forest concessions under certification by the Forest Stewardship Council (FSC), with these projects implementing FPIC. With other concessions, social and environmental safeguards and benefit sharing are inconsistent – some companies contribute what they are legally/contractually obligated to, while others may not. Due to the underdeveloped nature of SDCs and the lack of government administration and investment in much of northern Congo (e.g., ER-Program area), government relies upon concessionaires to be the providers of essential public services to the communities (i.e. roads, utilities,

healthcare, education, etc. As a result of their dependence on the companies and limited governance capacity, communities lack a strong negotiating position. Many conflicts with communities and challenges exist with the mining sector (i.e., insufficient compliance with national laws, inadequate measures taken to protect community access to resources), with NGOs providing support for communities to assert their rights under Congolese law.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

The Government of the Republic of Congo has shown determination in its efforts to enact reforms to sectoral framework laws that, at least in theory, enable community forestry and prevent deforestation. It has demonstrated progress on combatting illegal logging and improved capacity in some areas under the Congo-EU Voluntary Partnership Agreement.<sup>147</sup> Moreover, the FCPF/Carbon Fund engagement is credited with creating a safe space for dialogue between government representatives and rights-holders – processes that have been supported by international allies such as FPP, RFUK and RRI.

However, there exists little capacity within the government administration to implement its laws and existing regulations, nor is there a clear and transparent territorial management process that can be leveraged. Budget-strapped and faced with remote communities and challenging conditions (and among the most deteriorated rural infrastructure in the world throughout the ER-Program Area), government institutions have little effective presence near the communities. Communities in forest concessions depend more on services from the concessionaires than the government. Indeed, in many cases communities appear to depend on benevolence from these concessionaires rather than the limited infrastructure, oversight and enforcement of laws provided by the government. And civil society as a whole lacks the technical capacities and/or financial resources to effectively support and represent communities.

While the government appears willing to reform major laws, it has little capacity to directly support communities and is constrained by high levels of corruption.<sup>148</sup> This lack of implementation and dedicated resources raises

questions as to whether advancement of IP and LC rights are a priority for the government. Moreover, there are indications that funds derived from the proposed benefit plan will go into the local development fund, which has several weaknesses according to a recent study supported by the EU Forest Institute,<sup>149</sup> which noted serious problems with the local development funds in terms of efficiency, transparency and accountability.

Hence, while of the highest priority, opportunities to advance tenure security and community forestry in the Republic of Congo are severely constrained by a lack of institutional capacity. Most opportunities involve providing support to the various actors in this context (i.e., traditional authorities, companies, government, etc.). In most cases, this is envisioned to be provided by CSOs, in turn supported by external funding and technical capacity building. CSOs view the World Bank as the best entry point for opening dialogue with the government, and for building CSO capacity via the ER-P benefit sharing mechanism. World Bank investments in agroforestry projects have helped bridge the divide between CSOs and government, and additional investments could be made to better harmonize / coordinate interventions.

One significant opportunity area is to work directly with forestry companies and concessionaires to leverage community use-rights within concessions, as these are the major actors in rural Congolese forests. Activities can include capacity building and incentives to strengthen community participation and safeguards, improve logging practices for long-term sustainable forest management, add value to forest products within local communities, and building capacity and partnerships in local communities to best utilize and leverage financial obligations the companies have toward communities (e.g., at least 2 percent).

Opportunities for local communities to increase benefit from concessions are the most actionable short-term opportunities to leverage existing rights. Assuming the community development zone (SDC) model will feature in future concessions (including renewals), there is an opportunity to make it work better for communities. However, these proposed activities are not a substitute for the government implementing its obligations to advance tenure rights and security for IPs and LCs. Donors must leverage

investments within the context of status quo use-rights (i.e., SDCs) with investments to improve government service delivery and implementation of laws to advance IP and LCs' collective rights recognition.

Along these lines is the opportunity to support central government efforts at a national plan for territorial management, which should yield benefits in terms of reduced sectoral overlap and conflict. Currently, resource concessions are allocated separately by sector, leading to significant overlaps. To enable this effort, crucial studies of the geographic extent and location of IP and LC customary lands and associated usages must be carried out by government and CSOs. Civil society actors, through DGM support, aim to strengthen collabora-

tion with government institutions, with the aim of improving inter-ministerial coordination and sectoral harmonization on land, forest and water-related issues. Finally, given the magnitude and challenge of implementing the Promotion and Protection of Indigenous Populations Act (2011) for the recognition of Indigenous land rights, it is clear that systematic efforts over a period of 5 to 10 years are needed to develop, test, and pilot simplified, fit for purpose approaches to demarcation, delimitation, and a rural cadaster. Such a process must accompany all programs that sought to work with forest concessions and/or protected areas (existing or proposed) to ensure that IP and LC land and forest rights are recognized and respected.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>150</sup>	Location of investments	Time-frame of investments <sup>151</sup>
Simplify and implement processes for formalizing Indigenous and customary land rights	<ul style="list-style-type: none"> <li>» Support development of guidelines and procedures for registering IP lands under Law 5 (2011)</li> <li>» Pilot fit-for-purpose approaches to demarcation, delimitation and a rural cadaster as part of national program dedicated to customary land demarcation</li> <li>» Use concession renewals to strengthen rights/capacity of communities within SDCs, including improved community governance (and related investments in capacity building), enforcement of environmental/social safeguards (incl. FPIC) and local economic development; use concession renewals to implement demarcation, delimitation and recognition of IP and LC rights</li> </ul>	Communities, Traditional authorities, Policymakers, Government agencies, CSOs/NGOs (i.e., ClientEarth)	Large	National	Short-medium-term
Support development of national plan for territorial management/national land use plan and improved intersectoral coordination government institutions	<ul style="list-style-type: none"> <li>» Finalize determination of the Permanent Forest Estate</li> <li>» Support putting government land use planning committees into practice to adjudicate conflicts</li> <li>» Capacity building to facilitate intersectoral coordination of national and provincial government institutions</li> <li>» Support development of legal means for communities/IPs to pursue lifestyle needs within national land use planning effort</li> <li>» Prioritize support for large-scale zoning effort focused on lands important for customary use by communities and IPs (associated study on IP and LC customary lands, see below)</li> </ul>	CAFI, CSOs (with technical capacity to support large-scale zoning, govt. capacity building and legal reforms), Government policymakers, Ministerial/institutional leadership (NR Sectors)	Large	National	Medium-term



Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>150</sup>	Location of investments	Time-frame of investments <sup>151</sup>
Support community consultation and participation processes	<ul style="list-style-type: none"> <li>» Support creation of implementing regulations for Forest Code (2020) pertaining to community and CSO participation and roles in decision-making</li> <li>» Capacity building of communities in SDCs to improve engagement with CSOs and companies; support development of community governance</li> </ul>	Communities, CSOs/NGOs, Government policymakers, Companies/concessionaires	Large	National	Long-term
Improve monitoring and compliance with national NR sectoral laws and environmental & social safeguards	<ul style="list-style-type: none"> <li>» Support government to focus monitoring and enforcement of existing legal provisions on lands and resources claimed by communities and IPs (SDCs and IP lands that notionally could be registered under Law 5)</li> <li>» Utilize ER-P learning process to clarify and strengthen role of CSOs in monitoring and compliance of safeguards</li> </ul>	Government institutions related to safeguards enforcement and monitoring, CSOs	Large	National	Long-term
Improve government implementation capacity	<ul style="list-style-type: none"> <li>» Conduct studies to better understand the geographic extent and locations of IPLC customary lands and associated usages</li> <li>» Improve government institutional capacity to facilitate IP and LC registration of communal forests under Forest Code and IP delimitation under Law 5 (2011) via simplified procedures (see above), national program dedicated to customary land demarcation, technical capacity building and financial support</li> </ul>	CSOs/NGOs, Government institutions, Donors, IPLC stakeholders	Large	National	Medium-term
Develop CSO capacity to support diverse stakeholders	<ul style="list-style-type: none"> <li>» Via donor projects (such as WB agroforestry project) build relationships between CSOs and government institutions to facilitate coordination/harmonization of efforts</li> <li>» Directly support CSOs with technical capacity building and financial resources</li> <li>» Develop CSO national coordination platform for more effective engagement with all actors</li> </ul>	World Bank + other donors, CSOs/NGOs, Government institutions	Large	National	Medium-term
Engage companies/concessionaires to improve compliance with safeguards and increase community benefits	<ul style="list-style-type: none"> <li>» Support CSOs/donors to partner with forest and mining concessionaires to monitor and improve compliance with safeguards, promote community economic development, and strengthen community governance (incl. fiscal management capacity) in order to confer benefits on communities and improve long-term security in investments.</li> </ul>	Concessionaires, CSOs/NGOs, Communities, Donors	Moderate	National	Long-term

## STATUS OF LAND AND FOREST RIGHTS<sup>152</sup>

Key Element of Tenure Security <sup>153</sup>	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	Legal framework is adequate at the high level and appears to have potential for securing IP rights with the Promotion and Protection of Indigenous Populations Act (N° 5/2011), which include rights in absence of titles; customary rights with the Land Law (2018); and, the recently adopted Forest Code (2020), which may establish a community forestry scheme that grants forest-dependent communities forest management rights. <sup>154</sup> Constitutional recognition of IP and LC land or forest tenure is lacking. Women have equal protection of property rights under the constitution but gender-sensitive protections do not exist for community-based tenure regime-specific, community-level indicators (i.e., membership, inheritance, voting, leadership and dispute resolution). <sup>155</sup>	
2. Implementation of legal recognition.	The relatively progressive legal framework lacks effective implementation, including implementing guidelines and regulations. Overlapping claims is an issue and the formal mechanism (inter-ministerial committee established by Decree No. 2009-304) does not appear to be fully functioning. Forest estates (State forests, used by communities) are not completely demarcated. SDCs (created by forest concession management plans) are designated based on inadequate criteria, including agricultural uses, not activities such as hunting. IPLC rights are unrecognized across 84.9% (29 million ha) of the country's area. <sup>156</sup>	Simplify and implement processes for formalizing Indigenous and customary land rights; and, Support community consultation and participation processes.
3. Appropriate regulations for land and resource management	Monitoring and management of CFs are unclear in specifics and lack provisions, though the new Forest Code appears to offer some guidance.	
4. Effective support from responsible government agencies	Sectoral coordination (between land use categories) is insufficient and corruption is widespread. Resources for monitoring and enforcement are insufficient.	Support development of national plan for territorial management/national land use plan and improved intersectoral coordination government institutions; and Improve government implementation capacity.
5. Empowered and inclusive Indigenous and community governance	Despite provisions in the new Forest Code (2020) there are concerns that logging companies control decision making regarding rules for community livelihoods; CSO and community involvement in the developing of implementing regulations will be instrumental in protecting IP and LC interests.	Support community consultation and participation processes; Develop CSO capacity to support diverse stakeholders; and Engage companies/concessionaires to improve compliance with safeguards and increase community benefits.
6. Systems for recording community forest tenure rights	Legislation only requires demarcation at ground level and makes no reference to publishing maps; Other pieces of legislation covering land and tenure do not make mention of such maps either and the absence of a national land use plan leads to overlapping uses.	Simplify and implement processes for formalizing Indigenous and customary land rights; and Improve government implementation capacity.
7. Enforcement of tenure rights	A lack of coordination between institutions and low institutional capacity lead to insufficient enforcement of tenure rights. Forest monitoring by CSO is legally recognized under the new Forest Code (2020) and may help. The Congo-EU Voluntary Partnership Agreement (VPA) has contributed to progress on illegal logging.	Improve monitoring and compliance with national NR sectoral laws and environmental & social safeguards.



Key Element of Tenure Security <sup>153</sup>	Country Findings	Opportunities for policy/action/investment
8. Protection of collective tenure rights in relation to other forms of tenure and land use	The new Forest Code (2020) put FPIC in place for the first time. Also, under the law, benefit-sharing specifics for concessions contracts are negotiated directly with communities. Law No. 5-2011 on IPs requires FPIC but this is not applied in practice.	Support development of national plan for territorial management/national land use plan and improved intersectoral coordination government institutions; Improve monitoring and compliance with national NR sectoral laws and environmental & social safeguards; and Engage companies/concessionaires to improve compliance with safeguards and increase community benefits.
9. Conflict and dispute resolution	Land disputes are increasing. However, the new Forest Code has several key provisions aimed at curbing conflict, including CSOs taking part in forest-concession adjudication and FPIC.	Improve monitoring and compliance with national NR sectoral laws and environmental & social safeguards.

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>157</sup>

Project Name	Location	Financier	Implementer	Budget (millions, US\$)	Duration
Support to IPs and LCs for Sustainable Resources Management (DGM)	-	WB	DGM National Steering Committee	4.5	Pipeline
Northern Congo Agroforestry Project	-	WB (FIP)	Ministry of Agriculture, Livestock & Fisheries/Ministry of Forest Economy	16	Pipeline
Emission Reductions Program in Sangha-Likouala	Sangha & Likouala Departments	WB (FCPF)	National REDD Coordination	85.1	Not yet signed

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Insufficient participation by communities in SDCs	National	Safeguard processes such as FPIC may not be carried out in all forest concessions.	Moderate	Moderate
Insufficient community capacity to participate in, and benefit from, consultation process	National	Communities are highly variable in their capacity to negotiate with companies/government and participate in consultation processes.	High	Moderate
Endemic corruption in government	National	Corruption in government may increase costs and decrease benefits of strengthening institutional capacity.	Moderate	Low
Lack of implementing regulations	National	A widespread lack of implementing regulations/rules/guidelines impacts the benefits of community forestry to communities and limits implementation of rights.	High	Low
Lack of intersectoral coordination	National	Conflicts over land and resources continue/increase due to uncoordinated allocations and development (especially between mining, hydrocarbons and forestry).	Moderate	High
Government administration/ institutional capacity is low	National	Capacity of government institutions is extremely low in remote areas of northern Congo.	High	Moderate
Limited community leverage with companies	National	With communities dependent on concessionaire-provided services, without strong CSO partners they may have little willingness or leverage to improve benefit-sharing or enforcement of social and environmental standards.	Low	Moderate
Government resources remain insufficient	National	With the ongoing COVID-19 crisis, the national government may increasingly deprioritize social and environmental programs, including community forestry.	High	Low
Lack of appropriate technical-administrative processes and procedures for the demarcation and delimitation of Indigenous Peoples' traditional territories, impeding legal recognition and formalization of land rights.	National	Systematic efforts needed to develop, test, and pilot simplified, fit for purpose approaches to demarcation, delimitation, and rural cadaster; ideally, this would be carried out as part of a national program dedicated to advancing IP and LC rights implementation.	High	High
Efforts to support communities within SDCs suggests de facto strengthening of this limited approach to collective use-rights	National	Donor-led efforts to support communities within SDCs may reduce impetus for government to advance IP and LC tenure security. All investments within SDCs must be conditional on government efforts to advance secure IP and LC tenure rights	Moderate	High

## ENDNOTES

1. Estimate of land under customary ownership from USAID. 2013. Land Links – Ghana. Accessed at <https://land-links.org/country-profile/ghana/>
2. Types of tenure (e.g., bundle of rights categories) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whatrightsnovember13final.pdf>.
3. Bundle of rights data from literature and expert interviews. This was an area where there was significant disagreement as to the measure of management and alienation rights that traditional authorities possess, both legally and in practice. In this report we follow the analyses generally described by the relevant FCPF and international development literature.
4. Asamoah, O., et al. 2020. Assessing wood waste by timber industry as a contributing factor to deforestation in Ghana. *Forests* 11(939). Accessed at <https://www.mdpi.com/1999-4907/11/9/939>
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6. Ghebru, Khan & Lambrecht, 2016 and Lambrecht & Asare, 2015, cited in Roth, M., Antwi, Y., & O'Sullivan, R. 2017. Land and Natural Resource Governance and Tenure for Enabling Sustainable Cocoa Cultivation in Ghana. Washington, DC: USAID Tenure and Global Climate Change Program. Accessed at [https://www.land-links.org/wp-content/uploads/2017/02/TGCC-Cocoa-tenure-deforestation-assessment\\_Feb-2019.pdf#page=32](https://www.land-links.org/wp-content/uploads/2017/02/TGCC-Cocoa-tenure-deforestation-assessment_Feb-2019.pdf#page=32)
7. The average productive cocoa farm in Ghana is 2-3 hectares. Yields are low (300-400 kg/ha/annually), less than half that of other areas of West Africa. For more information see page 8, Roth, M., Antwi, Y., & O'Sullivan, R. 2017. Land and Natural Resource Governance and Tenure for Enabling Sustainable Cocoa Cultivation in Ghana. Washington, DC: USAID Tenure and Global Climate Change Program. Accessed at [https://www.land-links.org/wp-content/uploads/2017/02/TGCC-Cocoa-tenure-deforestation-assessment\\_Feb-2019.pdf](https://www.land-links.org/wp-content/uploads/2017/02/TGCC-Cocoa-tenure-deforestation-assessment_Feb-2019.pdf)
8. Forest Commission of Ghana – Ministry of Lands and Natural Resources. November 2018. Environmental and Social Management Framework (ESMF). Accessed at <http://documents1.worldbank.org/curated/en/832471542189620643/pdf/ESMF-GCFRP-Clean-for-RSA-cleared-and-for-disclosure.pdf>
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management, responsibility, and authority, issued by the Minister of Lands and Forestry, is achievable through the CREMA process. In principle then, CREMAs facilitate community-based assessment and planning, democratic decision making by local leadership, and benefit sharing among all stakeholders.” The draft Wildlife Resources Management Bill will establish a legal basis for CREMAs.

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25. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

26. Time-frame categories include the estimated duration of investments and/or project implementation (investments/ activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

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29. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

30. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR’s Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

31. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

32. Includes major Official Development Assistance (ODA) disbursement flows, including bilateral donor agency, multilateral agency and private donor disbursements. Combined disbursements over 2018-2019 period of ≥US\$1m are included. Multilateral agencies are shown in red, bilateral and country donors are shown in blue and labeled by country. For details about the data, see <https://stats.oecd.org/qwids/about.html>. For a complete list of reporting institutions see Annex XX. Data accessed from: <https://stats.oecd.org>

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36. "Indigenous Peoples" are not recognized in Mozambique – all people are considered Mozambicans.
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39. WRI. 2017. The Scramble for Land Rights: Reducing inequity between communities and companies. Accessed at <https://files.wri.org/s3fs-public/scramble-land-rights.pdf>
40. For more information on the benefits of DUATs to communities, see Turner, C. 2017. Land Tenure Assessment for the ER-PD. Etc Terra. Accessed at [https://www.nitidae.org/files/2cff0a61/land\\_tenure\\_assessment\\_zilmp\\_final\\_report.pdf](https://www.nitidae.org/files/2cff0a61/land_tenure_assessment_zilmp_final_report.pdf)
41. DUATs encompass non-exclusive rights to most natural resources (i.e., trees, wildlife, etc.). Minerals are the only resource that can be expropriated.
42. FCPF. 2018. Revised Emission Reductions Program Document – Zambezia Integrated Landscape Management Program. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/Mozambique\\_Revised\\_ERPD\\_16April2018\\_CLEAN.pdf#PAGE=108](https://www.forestcarbonpartnership.org/system/files/documents/Mozambique_Revised_ERPD_16April2018_CLEAN.pdf#PAGE=108)
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44. Conflicts do occur between neighboring communities and are usually resolved by customary mechanisms. Conflicts arising between investors (or outsiders) and communities may be brought into the formal conflict resolution system, first at the district level and, if necessary, the provincial level.
45. For a deeper look at community conflicts in the context of the plantation forestry sector, see the World Bank's review: Serzedelo de Almeida, L & C. Delgado. 2019. The Plantation Forestry Sector In Mozambique: Community Involvement And Jobs. World Bank. Accessed at <https://openknowledge.worldbank.org/bitstream/handle/10986/31753/The-Plantation-Forestry-Sector-in-Mozambique-Community-Involvement-and-Jobs.pdf?sequence=1&isAllowed=y>
46. From World Bank. 2018. Mozambique Land Administration Project (Terra Segura). Project Appraisal Document. Accessed at <http://documents1.worldbank.org/curated/en/690511544238091029/pdf/Mozambique-PAD-P164551-for-Board-11132018-636798168819424015.pdf#page=20>
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49. For more details on the CaVaTeCo platform, refer to 1) <https://landportal.org/file/47969/download>; <https://www.sciencedirect.com/science/article/pii/S0264837718309943>; <https://landportal.org/node/89138>; and <https://www.globallandalliance.org/articles/community-participation-and-inclusion-during-a-pandemic-recent-experiences-from-around-the-world>.
50. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.
51. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.
52. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.
53. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf).
54. For more information, see Rights and Resources Initiative. 2017. Power and Potential – A comparative analysis of



national laws concerning women's rights to community forests. Accessed at [https://rightsandresources.org/wp-content/uploads/2017/05/Power\\_and\\_Potential\\_Final\\_EN\\_May\\_2017\\_RRI-1.pdf](https://rightsandresources.org/wp-content/uploads/2017/05/Power_and_Potential_Final_EN_May_2017_RRI-1.pdf).

55. See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendant Peoples where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

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57. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

58. Includes major Official Development Assistance (ODA) disbursement flows, including bilateral donor agency, multilateral agency and private donor disbursements. Combined disbursements over 2018-2019 period of  $\geq$ US\$1m are included. Multilateral agencies are shown in red, bilateral and country donors are shown in blue and labeled by country. For details about the data, see <https://stats.oecd.org/qwids/about.html>. For a complete list of reporting institutions see Annex XX. Data accessed from: <https://stats.oecd.org>.

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61. Ibid.

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66. USAID. 2021. The Land and Tree Tenure Nexus in Côte d'Ivoire. [https://www.land-links.org/wp-content/uploads/2021/03/ILRG-Tree-and-Land-Tenure-Nexus-in-CDI\\_final.pdf](https://www.land-links.org/wp-content/uploads/2021/03/ILRG-Tree-and-Land-Tenure-Nexus-in-CDI_final.pdf)

67. GoCI. 2019b. Stratégie nationale de préservation, de réhabilitation et d'extension des forêts. Abidjan: Ministère des Eaux et Forêts. [http://www.eauxetforets.gouv.ci/sites/default/files/communiqu/strat\\_nationale\\_de\\_preservation\\_0.pdf](http://www.eauxetforets.gouv.ci/sites/default/files/communiqu/strat_nationale_de_preservation_0.pdf)

68. Source: USAID Land Country Profile for Cote D'Ivoire, 2017. [https://land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Cote\\_dIvoire\\_Profile.pdf](https://land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Cote_dIvoire_Profile.pdf)

69. Source: USAID Land Country Profile for Cote D'Ivoire, 2017. [https://land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Cote\\_dIvoire\\_Profile.pdf](https://land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Cote_dIvoire_Profile.pdf)

70. IDMC, 2009; ERPD, 2019, p. 54.

71. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

72. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing):  $<2$  years = Short-term; 2-7 years = Medium-term; and,  $>7$  years = Long-term.

73. Country findings are informed by literature review, interviews with key stakeholders and experts, and an electronic questionnaire.

74. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

75. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

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77. See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendant Peoples where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

78. Types of tenure (e.g., bundle of rights) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National

Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whatrightsnovember13final.pdf>. Unless otherwise noted, bundle of rights determined from RRI. 2016. Depth of Rights Consolidated Database. Excel spreadsheet provided by RRI.

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87. Since 2018, many more LCFCs have been created. See up-to-date information at the official community forest database of the DRC at <https://rdc.geocfcl.org/applications/>

88. The financing needed for two concessions supported by CIFOR amounted to \$109,000 and \$153,000, including meetings and legal costs. For details see Lescuyer et al. 2019. Are community forests a viable model for the Democratic Republic of Congo? *Ecology and Society* 24(1):6. <https://doi.org/10.5751/ES-10672-240106>. Accessed at <https://www.ecologyandsociety.org/vol24/iss1/art6/table1.html>

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91. Yeung, P. January 7<sup>th</sup>, 2021. The bold plan to save Africa's largest forest. Future Planet. BBC. Accessed at <https://www.bbc.com/future/article/20210107-congo-basin-a-bold-plan-to-save-africas-largest-rainforest>

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94. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

95. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

96. A more pragmatic approach, suggested by Lescuyer et al (2019) is to establish broad principles of governance for CBFM, leaving each community to choose its own criteria for implementing them.

97. Country findings are informed from literature review, the Forest Tenure Assessment Tool pilot conducted by the World Bank and Global Land Alliance. 2020. Interviews with key stakeholders and experts and the electronic questionnaire.

98. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural



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Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

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100. See Rights and Resources Institute. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendant Peoples where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>

101. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

102. Types of tenure (e.g., bundle of rights categories) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries’ National Legislation on Community and Indigenous Peoples’ Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whatrightsnovember13final.pdf>

103. French acronym for the *Gestion Locale Sécurisée* (or Secured Local Management) Law

104. Biodiversity hotspots are defined as areas with exceptional species richness and concentrations of endemic species, and the loss of >70 per cent of the original primary vegetation. Ganzhorn, et. al 2008: “The Biodiversity of Madagascar: One of the World’s Hottest Hotspots on Its Way Out” *Oryx* 35(4):346 – 348. DOI: 10.1046/j.1365-3008.2001.00201.

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106. UN FAO 2018; Teyssier 2018; Evers et al. 2006.

107. Recent work by Ranjatson et al (2019) calls in to question the security of some individual titles. Research in the Beony Region on the Forest Land Restoration (FLR) initiatives concluded that there is a need to deal with certain challenges related to use of land certification processes that are rooted in the concept of individual private ownership in areas where individualized parcels are commonly embedded within an overarching framework of collective ownership. Individually cultivated parcels are being targeted for certification or titling on the supposition that formalization will increase tenure security for the holder and, consequently, will increase the

incentive for the landholder to invest in restoration. However, individually farmed plots that are cultivated within a collective tenure framework generally have boundaries which fluctuate over time to take into account shifts in the availability of labor and other resources to the land holder, as well as changes in climate and the needs of other members of the collectivity.

In such cases, they conclude, formal certification risks fixing boundaries that are presently flexible and potentially reduces the resiliency of land management systems that have been developed to deal with climatic, economic, and other uncertainties. *Source:* Ranjatson, P., McLain, R., Mananga, J., Randrianasolo, R., and N.T. Razafimbela, Steven Lawry. 2019. Tenure Security and Forest Landscape Restoration: Results from Exploratory Research in Boeny, Madagascar. Paper prepared for presentation at the 2019 World Bank Conference On Land And Poverty, Washington DC. March 25-29, 2019. Accessed at [https://www.cifor.org/publications/pdf\\_files/Papers/PMcLain1901.pdf](https://www.cifor.org/publications/pdf_files/Papers/PMcLain1901.pdf)

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119. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.
120. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.
121. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)
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123. Only projects over US\$1 million in size are included, including direct project expenditures and administration.
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153. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

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# LATIN AMERICA AND CARIBBEAN COUNTRY PROFILES



## Deep Dive Country Profile

### COSTA RICA\*

#### COMMUNITY FOREST TENURE IN COSTA RICA AT A GLANCE

Total area under communal ownership (million hectares) / % of national territory under communal ownership	0.33 / <b>6%</b> <sup>1</sup>
Forest area under communal ownership (million hectares) / % of nation's forests under communal tenure	0.28 / <b>12%</b> <sup>2</sup>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Ministry of the Environment and Energy (MINAE)</li> <li>» National Fund for Forest Financing (FONAFIFO)</li> <li>» National System of Conservation Areas (SINAC)</li> <li>» National Directorate for Community Development (DINADECO)</li> <li>» National Institute of Rural Development (INDER)</li> <li>» National Commission on Indigenous Affairs (CONAI)</li> </ul>
FCPF REDD+ Jurisdictions:	Entire national territory (5.11 million hectares)
FCPF REDD+ Advancements:	ERPA signed, December 2020

#### COMMUNITY TENURE CATEGORY IN COSTA RICA<sup>3</sup>

<b>Indigenous Lands:</b> Indigenous Lands, enabled by the 1977 Indigenous Law, are owned by the Indigenous communities, and managed by Indigenous Integral Development Associations (ADIIs).	<b>RRI Tenure Type (preliminary designation):</b> <sup>4</sup> <b>Owned</b> <b>Access:</b> Yes <b>Withdrawal:</b> Limited, only for domestic consumption - cannot access commercial forest management permits. <b>Management:</b> Yes <b>Exclusion:</b> Yes <b>Alienation:</b> No <b>Due process and Compensation:</b> Lands can be expropriated; Costa Rica has ratified ILO 169 which states that IP should receive compensation, <sup>5</sup> and the American Convention on Human Rights “Pact of San Jose, Costa Rica” that requires “just compensation” <sup>6</sup> <b>Duration:</b> Unlimited
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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Over the past several decades, Costa Rica has been a global leader in forest conservation and policy. Deforestation rates have declined since 1985 and the country has achieved a net annual gain of forest cover since 2000.<sup>7</sup> Part of this success can be attributed to Costa Rica's forward-looking initiatives, including its national Payment for Environmental Services (PES) program (set up under the 1996 Forestry Law), which incentivizes, *inter alia*, conservation and sustainable forest management with payments to landholders. The program is administered by the National Forestry Financing Fund (FONAFIFO) and is financed by the national fuel tax and a water use fee. By 2013 the program has invested more than US\$400 million in rural areas and been adopted on over one million hectares.<sup>8</sup>

Indigenous peoples in Costa Rica comprise 2.4 percent of the country's population and own almost 12 percent of all forests in the country. RRI reports that another 800,000 hectares of land area (15.7 percent of national landmass) are unrecognized but claimed by peasant communities.<sup>9,10</sup> Costa Rica's legal framework provides a mechanism for IP collective land/forest rights through the Indigenous Law (1977). The law provides for the exclusive occupation of Indigenous territories by the IP communities that inhabit them and allows for limited joint forest resources development (though it effectively precludes commercial exploitation of natural forest). IP territories participate in the PES program, through agreements with the government. The law prohibits non-IPs from owning land within IP territories and details a legal mechanism for expropriation and compensation of non-IP in-holdings. Mechanisms for securing local community (non-IP) collective lands are not provided for in the legal framework.

Indigenous Peoples' traditional governance is varied, as centuries of marginalization, discrimination, loss of territory, and acculturation have resulted in the erosion and weakening of traditional governance and decision-making structures. IPs have successfully organized and carried out national consultations on REDD+ processes, including an innovative *cultural mediators' program* to educate communities within IP territories about REDD+; a "good

practice" that might serve as a model in other countries. The Indigenous Law created Integral Indigenous Development Associations – ADIIs – which function as the officially recognized governance system for each territory. IP rights to forests are collective and several communities can combine under a single ADII. ADIIs are under the supervision and authority of the National Directorate for Community Development (DINADECO), and as such are criticized as illegitimate systems imposed by government upon IPs and their territories.<sup>11</sup> This conflict was noted also by the Inter-American Commission for Human Rights (IAHCR): "*While in some cases the Indigenous territories have adapted their representative structures to the structures of the ADI, in several others, including in the case of the Teribe people, the presence of the ADIs has resulted in the degeneration of the traditional structures of representation. of Indigenous peoples.*"<sup>ibid</sup>

The ADII's performance as governing bodies is variable. Limited capacity, issues of transparency and accountability, as well as frequent turnover of leadership challenges their competency and acceptance as "*local governments and official representatives of Indigenous communities.*"<sup>12</sup> In result, that PES funds are disbursed to ADIIs for distribution through the territory has, in some cases, exacerbated tensions. The government recently executed an Indigenous consultation mechanism (Decree N.40932, 2018) which may fill the gap in the Indigenous Law regarding FPIC and provide for more transparency in the governance of such resources. New laws establishing IP autonomy and other national-level reforms have been suggested by IPs as possible remedies for these issues. However, both the political capital and leverage of IPs to make the case for such reforms have been insufficient so far.

FONAFIFO is the primary government entity responsible for REDD+ implementation in Costa Rica. Activities detailed in the Emissions Reduction Program Document relating to IP territories include:

- » Updating the National Forestry Development Plan with the participation of IP territories (including FPIC);
- » Identification of gaps between national and international regulations over IP resource management;
- » Supporting conflict resolution mechanisms, including the development of alternative mechanisms for settling tenure disputes in IP territories;



- » Forest management capacity building and knowledge transfer;
- » Update land tenure studies in all IP territories and develop long-term plan for regularizing IP land rights;
- » Support design of legal and cadastral assistance mechanism for IP territories;
- » Capacity building program for IPs to improve knowledge on accessing benefits from new financing mechanisms;
- » Explore prioritizing PES allocations to IP territories.

The dominant issue for Indigenous Peoples in Costa Rica is failure to fully implement the 1997 Indigenous Law. Many legally designated IP-lands experience widespread occupation by non-IP landholders. Despite the prohibitions written into the Indigenous Law, 43 percent of land in IP territories is occupied by non-IPs, with extreme cases in the territories of Altos de San Antonio (Ngobe), China Kichá (Cabécar), Quitirrisi (Huetar), Térraba (Homónimo) and Curré (Brunca), where more than 80 percent of the area is occupied.<sup>13</sup> One particularly extreme case exhibits a non-IP occupation as high as 98 percent.<sup>14</sup>

In 2015 the IACHR formally requested of the Government of Costa Rica, through Precautionary Measure 321-12,<sup>15</sup> to adopt the necessary measures to guarantee the life and personal integrity of the members of the Teribe and Bribri Indigenous peoples in the province of Punta Arenas. The measures were proposed in response to acts of violence and attacks on Indigenous leaders and human rights defenders in the territories of Salitre and Térraba who were seeking the recovery of their lands. In response, among others, Costa Rica's Institute for Rural Development (INDER)<sup>16</sup> initiated in 2016 the Indigenous Territories Recovery Plan (*Plan RTI*),<sup>17</sup> with the goal of regularizing the land tenure situation in the Indigenous territories of the country by 2023. However, this mechanism only allows for the development of the case files – information collection, delimitation, census of occupants, topographic surveys, preparation of dossiers on individual landholdings, and valuation studies, and the making of technical-legal recommendation to the government on the measures to be taken. As of March of 2019, the plan had been implemented in ten Indigenous territories, with

12,000 hectares (in 808 non-IP landholdings) surveyed, and the results “passed on to other institutions that would carry out the processes of expropriation or indemnification, according to the case.” To date the follow through has been limited.<sup>ibid.</sup> In March of 2020, the IACHR reiterated its continued concerns over the situation of death threats, harassment and violence that Indigenous leaders and human rights defenders currently face in some parts of the country.

The government's legal processes through INDER and CONAI to expropriate and compensate good faith non-IP landholders have proven slow and inadequate to expropriate or indemnify (as per the case) landholders for of well over 100,000 hectares. Even with the support of the proposed activities under the FCPF REDD+ Emission Reduction Program(ER-P) to clarify procedures, this effort will require many decades at the current levels of resourcing from the central government. The issue of incomplete titling on IP territories is serious, and growing conflicts between non-IP settlers and IPs (which may be further exacerbated by REDD+ processes) have at times led to violence. A recent statement by the UN *Special Rapporteurs on The Situation Of Human Rights Defenders and on The Rights Of Indigenous Peoples* has raised concerns about an upsurge of violence directed against Indigenous leaders who are pursuing efforts for the recovery of their territories. This has included the deaths of two Indigenous leaders in 2019 and reports of threats, intimidation, physical violence, and arson. They point to the slow implementation of the 1977 Indigenous Law, and the increasing pressures by Indigenous leaders and communities for the restitution of their lands as causing a significant violent backlash from non-Indigenous occupants. They have called upon the government to step up its efforts and “expressed grave concern for the lives of Indigenous human rights defenders being attacked in Costa Rica, saying that impunity and lack of accountability are fueling a continuation of violence against defenders in the country despite some positive steps by the Government.”<sup>18</sup>

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

Costa Rica's legal framework supporting IP and local community rights has several important gaps. While there is a significant legal enactment recognizing IP rights to

land (Indigenous Law, 1977), there is no Constitutional provision recognizing rights to land and forests, nor are IP rights articulated in social laws, including adequate implementation of legal procedures requiring FPIC.<sup>19,20</sup> Afro-descendant communities are not collectively recognized, nor are peasant communities, even though they claim an estimated 800,000 hectares. Despite these legal deficiencies, the current framework – which would also include the relevant provisions of UN-DRIP and ILO 169, given Costa Rica’s ratification through their Legislative Assembly – would support several opportunities for delivering meaningful improvements in tenure security and benefit Indigenous communities in Indigenous lands.

The issue of territorial regularization and the implementation of the existing efforts for the recovery of IP territorial lands from private non-IP landholders is the highest priority opportunity space in Costa Rica. It is also the most challenging to realize. Implementation of IP land recovery is essential both to meet the government’s legal obligations under the Indigenous Law and to resolve a situation of chronic tenure insecurity in the IP territories that contributes to deforestation and forest degradation. This process of recovery (final stage of titling involving expropriation lands from non-IPs) is already in place and could be made to move forward in a stepwise fashion, provided resourcing appropriate to the “next step or steps.” At present funding levels from GoCR congressional allocations, it would take over a century to recover the lands held by non-IPs – far too long given the growing scope of conflict and contention. It is essential that the upscaling of this effort includes clarification of the roles of government institutions (CONAI and INDER), the development and updating of a geo-referenced registry of the IP lands pending recovery, strengthened mechanisms for the avoidance and mitigation of the inevitable conflicts that would arise during land recovery, and, most challenging, a dedicated, expanded long-term funding source to enable compensation for expropriated lands.

A major obstacle to progress on the recovery of IP lands is the relatively low political and media profile of Indigenous Peoples in Costa Rica. While national media has highlighted the recent violence toward Indigenous leaders, overall, the discourse around the recovery of IP lands does not meet the scale and importance of the issue. It is

possible that the growing cases of violence against Indigenous leaders will encourage broader public interest which, in turn, might provoke serious political interest in these issues. For decades, Costa Rica built an international reputation on its commitment to the environment, backed by an impressive environmental legal framework and protected areas system. However, as academia, international institutions (including donors) and tourists reframe conservation and biodiversity as a social issue involving Indigenous Peoples and local communities, Costa Rica risks damaging its current standing and credibility as a world leader in environmental protection and conservation.

As the ER-Program’s Environmental and Social Management Framework points out, while Costa Rica has ratified important international conventions pertaining to IPs, the country mostly lacks procedures for implementing these laws. Violence and conflict resulting from inadequate government implementation of its legal obligation to recover IP lands present a growing reputational risk to the country. Full recovery of IP lands may be decades away, but the government can show its commitment to IP issues by looking forward as a means of achieving that end. External donors (i.e., World Bank, IADB) can support the government with technical capacity and investment in these earlier enabling activities.

Similarly, IP communities have raised a major issue in regards to the legitimacy and acceptance of the ADIIs as the local governments and official representatives of Indigenous communities. The extent and pervasiveness of this issue throughout the IP territories is unclear. However, what is clear is that the legitimacy of a governance mechanism that was super-imposed upon, or in parallel, to traditional governance structures by the 1978 regulation of the Indigenous Law of 1977 can not be assumed in all cases. Taken as an issue of governance, or as a safeguard issue of ensuring the adequate implementation of FPIC procedures where required,<sup>21</sup> it represents both a need and an opportunity space for strengthening IP technical and governance capacity in areas such as territorial planning, governance and administration, especially in protected areas and buffer zones through training and capacity building of relevant Indigenous traditional and statutory institutions. Such a process might also open opportunities for dialogue around desirable (from an IP

perspective) reforms to the Indigenous Law to incorporate FPIC (as needed, depending on function of Decree 40932), rights to manage and control lands, and recognition of customary rights, laws and institutions for the governance of IP territories.

Another issue of importance to Indigenous Costa Ricans is the concern that international efforts at conservation in Costa Rica (including REDD+) should incorporate a more holistic view of land, resources, and their local governance. The main concerns expressed were two. One, is that Costa Rica's Biodiversity Law had, in the past, provided a solid framework for the conservation, protection, and governance of the wide range of ecological services provided by forests and forest lands. However, that in recent years there has been too narrow a focus on "forest carbon", to the marginalization, if not exclusion of these others. The arguments put forward regarding this concern were essentially "follow the money" arguments, i.e., that while it is true that existing policy, legal and institutional (rhetorical) priorities yet give attention to the broader set of environmental considerations, the international incentive structures around FCPF/REDD+ have had the unintended consequence of reorienting the attention toward establishing governance and implementation frameworks to access international carbon payments. As a result, where IPs seek to protect, conserve, manage, and restore their territories to provide the full range of values that are important to them as a people – cultural, social, environmental, and economic. At the same time they see their possibilities for obtaining government and international support for doing as being limited to, and constrained by, the central importance placed on carbon. As one informant succinctly put it, "*Carbon sequestration is sequestering us.*"

The second concern raised was that the governance and valuation of carbon rights, as incentivized through the FCPF/REDD+ frameworks, is neither situated within the worldview of Indigenous Peoples nor are the emerging, parallel, "carbon" governance institutions supportive of their sovereignty and governance over natural resources on their lands. In the latter case, they fear the opposite, i.e., that governance mechanisms established for the marketing and distribution of benefits are a step backwards and away from their vision of, and efforts toward, gov-

ernance of their lands and natural resources. This will be a key challenge for future REDD+ implementation in many Indigenous and local communities where customary and traditional governance and management systems are still extant.

Along with strengthening and recognizing the internal customary Indigenous land and resource governance systems, the plea from these informants was that international and government cooperators should respect a more people-centered, integrative view of landscapes and resources, and look beyond technocratic forest and management programs aimed at reducing GHGs. IP representatives called for a social economy that is inclusive and incorporates NTFPs, agroforestry, land, soil, water, wildlife, plant health, spiritual and cultural values, and ecosystem restoration – a vision of ecosystem services that extends far beyond carbon.

Paralleling this discussion was the perceived inadequacy of consultations around REDD+ in the country, and the need to go beyond informing IPs to incorporating and respecting the diverse perspectives of different IP communities.

Perhaps the central opportunity to strengthen tenure security for IPs in Costa Rica would include encouragement, support and investments to mobilize the relevant government institutions to make continuous progress for the implementation of what will be a long term effort to recover Indigenous territory through a comprehensive, permanent and sustained strategy. Recognizing the challenging economic, political, and social contexts for fully implementing the Indigenous Territories Recovery Plan (ITRP), a successful approach will most likely be incremental. It should marshal the information required, prepare the ground for recovery by working with and strengthening IP governance and conflict resolution mechanisms, provide clear messaging to the public, and ensure public safety and impartial enforcement of laws in areas of historic conflict between IPs and illegal occupants. It should also recover lands, over time, in a fashion that manages controversy, generates political consensus and public support, and spreads out the financial burden. The government should recognize the importance to Costa Rica's perceived international reputation of protecting IP rights by implementing existing national laws and commitments,

and pragmatically moving forward on the implementation of the Indigenous Territories Recovery Plan. To assist in this, there are a number of opportunities to be considered, and many of the shorter-term opportunities would be consistent with the World Bank's post-COVID "Build Back Better"<sup>22</sup> strategy; noting that Costa Rica and its IP communities were hard hit by the pandemic. These range from opportunities in the World Bank's policy dialogue space (e.g., around the development of the World Bank's next Country Partnership Framework)<sup>23</sup> to assistance for development of a spatial geo-referenced registry of IP lands in order to obtain needed data and information on land ownership, land valuation and non-IP occupation;<sup>24</sup> strengthening FPIC processes and IP governance and participation, and ensuring accountable, equitable internal benefit sharing from PES; and conducting analytical work, among others.

Next, effective implementation of the activities detailed in the Emissions Reduction Program Document relating to IP territories is extremely important. While all of the activities have the potential to enhance IP tenure security (both *de jure* and *de facto*), perhaps the three most important are those which are directly relevant to advancing the implementation of the ITRP: updating land tenure studies in all IP territories and developing a long-term plan for regularizing IP land rights; supporting design of legal and cadastral assistance mechanism for IP territories; and supporting conflict resolution mechanisms, including the development of alternative mechanisms for settling tenure disputes in IP territories. A fourth activity prioritizing PES allocations to IP territories could also be on the critical path for ITRP implementation as a mechanism for Costa Rica to capture resources to cover the costs of implementing the ITRP and securing IP land rights necessary for the achievement of global goals for climate change mitigation and adaptation, and biodiversity conservation. The post-COVID recovery imperatives of dealing with structural

causes of inequality highlight another reason why this would be the time to move forward on the ITRP. Not only are IP territories some of the last major assets remaining for the government to address poverty and inequality, but the unresolved tenure issues are sources of conflicts that have been raised to the level of violence and murder in the last years and are a strong disincentive to any private investment in the long-term sustainable use these illegally occupied lands. Tenure insecurity in these areas is both a source and driver of conflicts, environmental degradation, and undermines the potential for economic and social development.

Additional opportunity areas include:

- » Development of a National Indigenous Peoples Development Plan, utilizing the lessons learned from the successful Indigenous Peoples Development Plan developed for Costa Rica's education and health sectors;
- » Build capacity for productive management of/within IP territories, including natural resources-based enterprises and for ecological restoration, to both sustainably manage a diversity of resources while growing their economic contribution to communities, as well as to enhance territorial security through active occupation and use of lands and natural assets.<sup>25</sup> The other IP-related activities in the ERPA – updating the National Forestry Development Plan with the participation of IP territories (including FPIC); identification of gaps between national and international regulations over IP resource management; forest management capacity building and knowledge transfer; and capacity building program for IPs to improve knowledge on accessing benefits from new financing mechanisms – would all make important contributions to realizing this opportunity.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Next Steps	Key stakeholders	Scale of investments <sup>26</sup>	Location of investments	Timeframe of investments <sup>27</sup>
Advance implementation of Indigenous Territories Recovery Plan (ITRP)	<ul style="list-style-type: none"> <li>» Follow-up for effective implementation of IP-related activities in ERPA</li> <li>» Conduct analytical work as inputs to policy process (i.e., identify budgetary pathways for implementation of Indigenous Territories Recovery Plan)</li> <li>» Clarify government agency roles in responsibilities toward compensation and eviction of illegal occupants of IP territories via government-led policy process</li> <li>» Address institutional gaps and bottlenecks in process of executing IP-lands buy-outs of non-IP landholders</li> <li>» Tenure studies/census of occupants<sup>28</sup></li> <li>» Develop implementation strategy</li> <li>» Strengthen govt. &amp; local capacity for conflict resolution on IP lands</li> <li>» Development of spatial, geo-referenced registry of IP lands, in order to obtain specific data on land ownership and non-IP occupation</li> </ul>	<ul style="list-style-type: none"> <li>» Policy dialogue/engagement on importance of ITRP to country &amp; Bank support</li> <li>» Strengthen IP engagement &amp; FPIC processes</li> <li>» Support development of medium-term strategy for ITRP</li> <li>» Implementation support for ITRP, including seeking GCF, GEF &amp; GEF/ICI, Tenure Facility, bi-lateral, other in support of implementation</li> <li>» IP poverty reduction/sustainable livelihoods/NRM programs in IP territories</li> </ul>	Government Stakeholders (CONAL, SINAC, INDER, DINADECO, Min. of Public Security), IP territories, CSO/NGOs, External donors	Short-term: Small Medium-term: Moderate Long-term: Large	National / IP territories	Long-term
Raise public profile of Indigenous territorial issues	<ul style="list-style-type: none"> <li>» Follow-up for effective implementation of IP-related activities in ERPA</li> <li>» Support national-level roundtables/workshops/ events on IP issues (poverty, inequality, tenure insecurity, violence against IP land rights activists, justification &amp; challenges for ITRP)</li> <li>» Support studies &amp; policy briefs on IP issues for abovementioned events &amp; to engage allies (donors, academics, NGOs, government agencies) and connect with IP leaders/communities</li> <li>» Develop National IP Development Plan on priority needs for poverty reduction, inclusive economic growth, sustainable rural development/natural resources management, with territorial security, local governance, and ITRP implementation</li> </ul>	<ul style="list-style-type: none"> <li>» Policy dialogue/engagement on importance of ITRP to country &amp; Bank support</li> <li>» Take advantage of process for development of next World Bank Country Partnership Framework to (i) build support for inclusion of IP issues; (ii) to support coherent, multi- sectoral World Bank program<sup>29</sup></li> </ul>	Government Stakeholders (Mins of Presidency, Finance, Ag, Env., CONAL, SINAC, INDER, DINADECO), IP territories, CSO/NGOs, External donors	Short-term: Small to Moderate Long-term: Moderate	National	Short-term: Country Partnership Framework, ERPA follow-up, IPDP development  Long-term: Implementation support to IPDP



Opportunity	Specific investments/actions	Next Steps	Key stakeholders	Scale of investments <sup>26</sup>	Location of investments	Timeframe of investments <sup>27</sup>
Strengthen IP technical and governance capacity and support legal reforms to enable IP participation	Follow-up for effective implementation of IP-related activities in ERPA Strengthen IP capacity for territorial planning, governance and administration, especially in protected areas and buffer zones by trainings and capacity building of relevant IP traditional and statutory institutions. Support legal reforms to Indigenous Law to incorporate FPIC (as needed, depending on function of Decree 40932), right to manage and control lands and recognition of customary law and courts	» Assessments of implementation & impacts of ERPA benefit sharing in IP lands » Implementation support to IPDP, including seeking GCF, GEF & GEF/ICI, Tenure Facility, bi-lateral, other in support of climate action, biodiversity conservation, territorial security, and NRM	IPs, IP customary governing and conflict resolution bodies, ADIIs	Moderate	National IP Territories	Medium-term
Strengthen community economic and social development	Compatible with SINAC zoning, support capacity building, training and financing mechanisms for forest-based enterprises, targeting youth, women and marginalized stakeholders		IPs, Forest-based enterprises, SINAC	Moderate	IP Territories	Long-term

## STATUS OF LAND AND FOREST RIGHTS<sup>30</sup>

Key Element of Tenure Security <sup>31</sup>	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	Legal frameworks for IP lands are somewhat adequate, though implementation of the laws has been an issue and there is no constitutional provision regarding tenure and land rights of Indigenous Peoples. Major issues in the legal framework for IPs are that the Indigenous Act does not provide for FPIC (though decree N.40932-MP-MJP in 2018 establishes an Indigenous consultation mechanism, <sup>32</sup> and Costa Rica has ratified ILO 169 that as international treaty ratified by Legislative Assembly is constitutionally superior to national law), the right to control and manage lands as they desire and recognition of customary law and courts. IP lands are titled as a territory, creating a legal entity that awards user rights (ADII - Associations for Integral Indigenous Development). IP rights to forests are collective, and ADIIs can be set up by several communities (inter-community titling).	Strengthen IP technical and governance capacity and support legal reforms to enable IP participation

Key Element of Tenure Security <sup>31</sup>	Country Findings	Opportunities for policy/action/investment
2. Implementation of legal recognition.	IP rights have been inadequately supported by the relevant State institutions – the Indigenous Law (1977) directs that IP lands can be recovered for IP people (via voluntary resettlement or expropriation) - however, this has largely not occurred. There remains widespread occupation of IP lands by non-IPs. The Rural Development Institute (INDER) has not demarcated the IP territories and the National Commission on Indigenous Affairs has not been able to perform a population census; therefore non-IP occupants cannot be identified. Overlaps exist between IP territories and declared protected wildlife areas.	
3. Appropriate regulations for land and resource management	IP ADIIs (Indigenous Integral Development Associations) cannot access commercial forest management permits - they can only make use of forest resources for domestic consumption. Permits are required to legally conduct forest operations. Stricter regulations are in place for natural forest management under the Forest Law than in treed grasslands or agroforestry lands, thereby incentivizing removal of trees from grasslands.	
4. Effective support from responsible government agencies	While overall political commitment to environmental matters is demonstrably high, it is unclear that there is significant support for strengthening IP land/forest tenure. The government appears to have little capacity to stop illegal encroachment and settling on IP lands. Relevant State institutions have not adequately registered and reappropriated IP lands from non-IP inhabitants. The Rural Development Institute has not demarcated IP territories and, with the National Commission on Indigenous Affairs, has not been adequately resourced to recover IP lands.	Advance implementation of Indigenous Territories Recovery Plan (ITRP); Raise public profile of Indigenous Peoples' territorial issues
5. Empowered and inclusive Indigenous and community governance	ADIIs are the bodies created by the government as a governance system for IP territories. ADIIs are overseen by the National Directorate for Community Development (DINADECO). Many other IP organizations/governing bodies exist, and there are legitimacy and participation issues with ADIIs.	Advance implementation of Indigenous Territories Recovery Plan (ITRP); Raise public profile of Indigenous Peoples' territorial issues; Strengthen IP technical and governance capacity and support legal reforms to enable IP participation; Strengthen community economic and social development
6. Systems for recording community forest tenure rights	Property rights can be registered at the National Registry. IP rights must be registered at the National Registrar. IP territories have so far not been demarcated.	Advance implementation of Indigenous Peoples' Territories Recovery Plan (ITRP)
7. Enforcement of tenure rights	In total, 43% of the land in IP territories is occupied by non-IPs. Agencies verifying legality of timber have insufficient funding and legal framework is complex and difficult to comply with. No clearly defined sanctions for non-compliance.	
8. Protection of collective tenure rights in relation to other forms of tenure and land use	UNDRIP and ILO 169, while ratified, have not had full regulations and procedures elaborated, and therefore have not been implemented. Decree N.40932-MP-MJP in 2018 establishes Indigenous consultation mechanism. <sup>33</sup> Overlaps exist between IP lands and protected areas.	Strengthen IP technical and governance capacity and support legal reforms to enable IP participation
9. Conflict and dispute resolution	Disputes in IP territories occur with occupation from non-IP outsiders, illegal logging and the construction of hydroelectric dams. At times these escalate to violence. Conflict resolution mechanisms for non-IP occupation and relocation appear inadequate to the scale of the issue.	Advance implementation of Indigenous Territories Recovery Plan (ITRP)



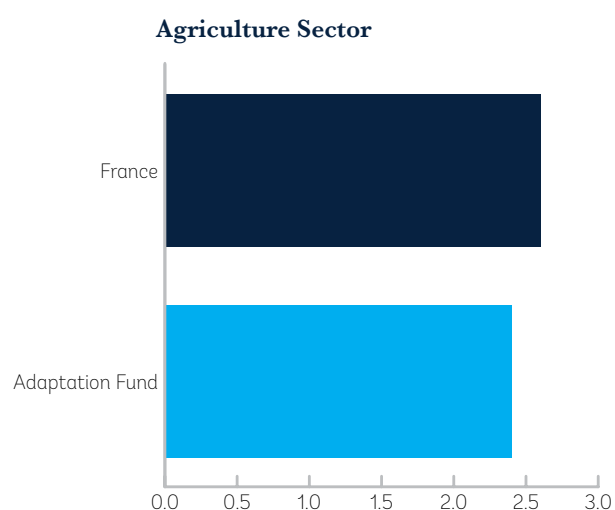
## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>34</sup>

Project Name	Location	Financier	Implementer	Budget (millions, US\$)	Duration
Costa Rica REDD+ Emission Reductions Program	National / IP Territories	WB	MINAE (FONAFIFO / SINAC)	60	2020 –
World Bank Country Partnership Framework	National	WB	GoCR	TBD	2021 –

### OFFICIAL DEVELOPMENT ASSISTANCE (ODA):

#### OVERVIEW OF SECTORAL DISBURSEMENTS TO COSTA RICA, 2018-2019<sup>35</sup>

Costa Rica's ODA flows from 2018 to 2019 confirm the lack of vehicles for investment from bilateral and multilateral donors for sectors related to land and forest tenure security beyond the Emission Reductions Program. Still, the global post-COVID and COP 26 agendas may create opportunities for targeted programs in support of collaborative efforts with World Bank and other international initiatives to scale-up global efforts to secure Indigenous Peoples and local community land rights, with objectives of inclusive economic recovery post-COVID and delivering on SDGs, and climate and biodiversity conservation goals.



*Note:* Values in millions, US\$ disbursements by multilateral agencies and donor countries. Forestry and rural development sectors had no major disbursements ( $\geq$  US\$1 million).

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area/Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/program mitigation
Funding sources and mechanisms are unable to meet demand for non-IP relocation/compensation	National	Time frame for external funding to sufficiently support non-IP compensation for in-holdings in IP territories may be insufficient to scale of task.	High	Low
Conflicts in IP territories accelerate around issues of non-IP landholders in IP lands.	National	Existing conflict resolution mechanisms are inadequate to address resource conflicts (i.e., illegal logging, infrastructure) and conflicts between IP territories and non-IP in-holders; conflicts at times escalate to violence.	Moderate	Moderate
In spite of proposed resourcing increases for non-IP buyouts in IP territories, relevant State institutions lack capacity or will to execute compensation/ relocation	National	While the legislation is clear regarding non-IP landholders in IP territories, presently institutional resourcing and drive have not been consistent across govt. institutions. There is a risk that, despite increased funding, institutions will not carry out their mandate to relocate/compensate non-IP landholders.	High	Moderate
Fiscal impacts of post-COVID economic recovery will significantly reduce the potential for government's financing of the land compensation mechanisms for restitution of IP lands occupied by non-IP landholders for the foreseeable future	National	Budget reprioritization as a result of the COVID health crisis threatens to divert attention and resources from land compensation mechanisms for recovery of IP lands.	High	Low

## Deep Dive Country Profile

### GUATEMALA\*

#### COMMUNITY FOREST TENURE IN GUATEMALA AT A GLANCE

Total area under communal ownership/ designation (million ha) / % of national territory under communal ownership/ designation	1.8 <sup>36</sup> / <b>17%</b>
Total forest area under communal ownership/ designation (million ha) / % of forest area under communal ownership/ designation	1.6 <sup>37</sup> / <b>43%</b>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Ministry of Environment and Natural Resources (MARN)</li> <li>» Ministry of Agriculture, Livestock and Food Supply (MAGA)</li> <li>» Cadastral Information Registry (RIC)</li> <li>» Secretariat of Agrarian Affairs</li> <li>» National Protected Areas Council (CONAP)</li> <li>» National Forest Institute (INAB)</li> <li>» National Land Fund (FONTIERRAS)</li> <li>» Ministry of Public Finance (MINFIN)</li> </ul>
FCPF REDD+ Jurisdictions:	91.7% of national territory (excludes part of Maya Biosphere Reserve and Municipalities of Morales, Livingston & Puerto Barrios)
FCPF REDD+ Advancements:	ERPA not yet signed

#### COMMUNITY TENURE CATEGORIES IN GUATEMALA<sup>38,39</sup>

<b>Communal Lands (<i>Tierras Comunes</i>):</b> Collectively owned lands possessed by IP or peasant communities or collective entities (with or without legal personality). May be part of lands registered under State or municipality, which have been traditionally held by community.	<b>RRI Tenure Type:<sup>40</sup> Owned</b> <b>Access:</b> Yes <b>Withdrawal:</b> Yes, subsistence allowed with Family Consumption Permit; commercial use requires license and Management Plan <b>Management:</b> Yes, with INAB approved Management Plan <b>Exclusion:</b> Yes <b>Alienation:</b> Yes, can give rights to others through private contracts <b>Due process and Compensation:</b> Partial; Logging licenses will be revoked when non-compliant with required obligations to INAB, Title 9 of Forest Law, or in exceedance of harvest quota. <b>Duration:</b> Unlimited
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### Community Concessions

#### (*Concesiones Comunitarias*):

Communities with legal status (including IP communities) may be granted forest concession to conduct forestry activities on State-owned forests. Must follow strict forest management rules.

### RRI Tenure Type: Designated

**Access:** Yes

**Withdrawal:** Yes, with Management Plan, EIA and 5-year operational plan; concessions may overlap with State assigned usufruct rights to NTFPs

**Management:** Yes, with INAB/CONAP approved Management Plan

**Exclusion:** Yes, though there may be concession overlap

**Alienation:** No

**Due process and Compensation:** Yes, State must follow due process to extinguish contract.

**Duration:** Up to 50 years, renewable (most contracts are granted for 25 years)

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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Guatemala is reportedly one of the most vulnerable countries in the world to the impacts of climate change; a situation resulting from a long history of poorly planned and managed development, environmental degradation, and poverty. Net deforestation<sup>41</sup> averages 23,685 hectares annually, mainly a result of unsustainable management (39 percent), and the expansion of livestock grazing (34 percent) and agriculture (24 percent). Some 38 percent of this loss occurs within protected areas.<sup>42</sup> Government's broader policies, programs, and incentives that affect land use decisions are not informed by a forest management (39 percent), and the expansion of livestock grazing (34 percent) and agriculture (24 percent). Some 38 percent of this of this loss occurs within protected areas.<sup>43</sup> Government's broader policies, programs, and incentives that affect land use decisions are not informed by a multi-sectoral territorial planning, and so oftentimes exacerbate forest loss. The expansion of grazing lands for livestock, especially in the Petén,<sup>44</sup> and commercial/industrial and subsistence agriculture to produce annual (e.g., maize, beans, melons) and perennial crops (e.g., coffee, African palm oil) are among the principal drivers of forest loss.

The population is almost equally divided between urban and rural.<sup>45</sup> Official statistics indicate that about 40 percent of the population is Indigenous however, according to Indigenous peoples' representatives, the true figure is closer to 60 percent.<sup>46</sup> More than 61 percent of the population lives in poverty.<sup>47,48</sup> Access to land is highly unequal, which contributes to social conflict: 88 percent of all farms are on only 16 percent of agricultural land,<sup>49</sup> and most families have limited access to productive land. Insecure tenure and access to land and resources along with chronic rural underdevelopment have left communities

both vulnerable to outside interests and without adequate services and opportunities. In this context, investments in tenure security, and productive/sustainable natural resource management are critical components to improve IP and LC livelihoods and address deforestation.

Indigenous Peoples' tenure is recognized by law but does not have an enabling legal framework to support implementation of IP-specific rights. There are no defined IP territories or reserves and IP-lands are for all practical purposes regulated similarly to the collective lands of peasant communities, i.e., as general communal lands. The legal framework includes the following laws that support collective land rights and access to natural resources:

- » Political Constitution (1985, 1993)
- » Civil Code (1973)
- » Decree 2 (2015, "Pro-Forest Law")
- » Peace Accords (1996)
- » Protected Areas Law (1989)
- » Forestry Law (1996, 2005)
- » Cadastral Information Registry Law (2005)
- » Municipal Code (1999)

Though there are no legal barriers to women owning land, few women do, an artefact of prevailing cultural attitudes and a lack of programs targeting access for women. Tenure rights differ depending on whether the community is the "owner" (with registered title), or "holder" of lands; a common category, in which municipalities are typically the owners but issue titles of possession for individuals or communities occupying the land and that confers many of the same rights. A third category of "tenants" is found within some land tenure laws, but this category confers few rights.

IPs in Guatemala have faced centuries of exclusion from their lands, beginning with the Spanish, and continuing

with reversals of the land reforms made in the decade prior to a military coup in 1954, which left the best land in the hands of a few elites. The 36-year Guatemalan Civil War displaced up to 1.5 million people and ended with the signing of Peace Accords that, *inter alia*, promised some degree of support for the rural landless and dispossessed. Out of this commitment came a novel communal land and forest tenure category: the forest concession. The Accords also led to the creation of the National Land Fund (FONTIERRAS), which was intended to facilitate access to productive lands by subsidizing the purchase of land for peasant families and collectives and transferring national lands to communities. While providing access and regularization support for many families and communities, the Fund has suffered from under resourcing and repayment issues. To date, national efforts have been insufficient and the recognition and securing of land rights for Indigenous Peoples and local communities remain largely incomplete, despite the institutional and administrative mechanisms having been developed to do so.

Community Forest concessions, which are regulated by the Protected Areas Law, have been issued in the Mayan Biosphere Reserve (MBR) in the Petén. These areas are under supervision by the National Council of Protected Areas (CONAP) with joint management by NGOs. The concessions allow communities to practice productive forest management within the MBR. Some of these communities were established over a century ago and had a history of forest use, while others date to the early 1990s and are comprised of migrants from elsewhere in Guatemala. Several factors have enabled communities to benefit from their concessions, including government sponsored delineation of land use within the concessions, marking of timber management areas, and the strong legal backing of exclusion rights.<sup>50</sup> Recently, the 25-year term of one of these concessions was renewed by the government in recognition of the thousands of jobs the concessions have created, the more than US\$6 million in annual revenues they have generated, and the significantly lower (near-zero) deforestation rates within them, as compared to the surrounding areas.<sup>51</sup> The other eight active concessions are either in the process of renewal, or are expected to have their contracts renewed, once their original 25 term nears expire.<sup>52</sup>

As of 2015 there were an estimated 1,000 community forestry organizations in Guatemala, organized through the Association of Forest Communities of Petén (ACOFOP) and the National Alliance of Forest Organizations of Guatemala (ANOFCEG).<sup>53</sup>

Communal lands, a second and dominant tenure type that includes lands held customarily by communities or owned by communities, were commonly registered to the municipality as a sort of “convenience”. That is, as neither the communities themselves nor their traditional forms of governance enjoy or enjoyed legal recognition or status. Community governance of forests on these lands is variable and depends in part on the municipality holding the title.<sup>54</sup> The strong traditions of communal property that currently exist in Guatemala are largely a result of strong Mayan traditions of collective management, as opposed to formal protections, and while the title to these lands is held by the municipality, the governance and management of those lands, especially in “*municipios indígenas*”, is by the communities. This is an important point for both FCPE, as well as any other projects or programs that are concerned with natural resources management. That is, the rights holder is not always the one that manages and protects the forests in the case of municipal lands. One example given is of the municipality of Patzún, Chimaltenango where “*the communities accept that the municipality holds the title, and municipality accepts that it is the communities that is in charge of governance and management* (‘gestion’).”

Decentralization to municipalities of supervisory forest management (from, *inter alia*, the 1999 Municipal Code reforms) has created financial incentives for municipalities (via fiscal transfers, incentives—such as allowing the collection of fines and user fees—that can be used as unrestricted funds, others) and led some to promote the registration of communal forests. Some delegate responsibilities to communities while others effectively exclude communities—if lands are titled to a municipality, it is under no obligation to involve traditional authorities. While municipal governments are instructed by the Municipal Code to consult community authorities and empower their use, conservation and administration over communal lands, there is no specific law that regulates public consultations of IP’s and LC’s. The Municipal Code does recognize the parallel authority of Indigenous or community mayors that exists

## REQUIREMENTS OF GOVERNMENT INCENTIVE PROGRAMS

Program	Tenure requirements	Characteristics
PINPEP	<ul style="list-style-type: none"> <li>» Being a land holder</li> <li>» Tenure certificate issued by the mayor of the municipality</li> </ul>	<ul style="list-style-type: none"> <li>» Owners who have registered titles in the Land Registry are excluded</li> <li>» The beneficiaries cannot receive benefit twice within the Program</li> </ul>
PROBOSQUE	<ul style="list-style-type: none"> <li>» Owners</li> <li>» Holders: social groups with legal personality that, by virtue of a legal arrangement, occupy land owned by the municipality (cooperatives or indigenous communities)</li> <li>» Tenants, with OCRET endorsement</li> <li>» Cooperatives or indigenous communities</li> </ul>	<ul style="list-style-type: none"> <li>» The beneficiaries can receive benefits only once</li> <li>» The maximum amount of years for incentives is 10</li> </ul>

Source: Forest Carbon Partnership Facility, 2019. Emission Reduction Program Document - Guatemala

alongside municipality governing bodies,<sup>55,56</sup> though, in general, issues remain when local governments, empowered through decentralization policies, ignore traditional governance and customary rights holders.

As recently as a few decades ago, communal forests in Totonicapán both produced the majority of wood used for the domestic furniture industry, and protected critical watersheds. This forest has been continually managed by an Indigenous communal labor system for centuries and has successfully resisted outside control until recently. In the 1990's, pressure from national and international environmental NGOs led to the formation of the Los Altos de San Miguel Totonicapán Regional Municipal Park from 16,000 of the 22,000 hectares of the Totonicapán communal forest. Under its new status, resource usage was restricted, and the municipal government took a significant role in administering the park from the traditional organizations from the 48 cantons that had previously stewarded the resources. The novel community organization intended by outsiders to facilitate management was very different than traditional organizations and thus was ultimately viewed as illegitimate. What was by most measures a model example of community forest management was weakened by State and external involvement, however well intentioned.<sup>57</sup> Despite this, all 48 cantons continue to elect their local committees to administer their collective natural resources and provide for public security, dispute resolution, and administration of justice. The communities are coordinated by a board whose president is elected each year by the mayors of the communities.

Notably, a substantial number of Indigenous communities hold legal titles to their traditional lands in Guatemala, having “bought” them centuries ago and obtained legitimate titles. Over time, however, these legitimate titles were ignored and “overwritten” by false titles that were fraudulently obtained to shift ownership to private parties or municipal governments. Today, under Guatemalan law, if an Indigenous community can establish that a lawful title was illegally overwritten, legal action can be filed to request annulment of the illegal title. In recent years dozens of such lawsuits have been filed by a collective of Guatemalan lawyers who are supporting Indigenous communities’ efforts to re-establish their legitimate claims to their traditional lands and territories. Based on the use of historical documents, numerous successful cases have been filed and the fraudulent titles annulled. These include cases on behalf of Maya-Q’ecqchi’ communities in the departments of Alta Verapaz, Izabal and El Petén; Maya Poqomchi’ and multicultural communities in the department of Baja Verapaz; Maya Ch’orti communities in the departments of Zacapa and Chiquimula; Maya K’iche’ communities in the departments of Quetzaltenango and Totonicapán; Maya Ixil communities in the department of El Quiché; and Maya Kaqchikel communities in the department of Guatemala.<sup>58</sup>

Other recent cases have led to the Guatemalan government’s official recognition of Indigenous authorities in titled Indigenous communities as having official status as legitimate government bodies. One example is the Maya K’iche’ community in the department of Totonicapán. They presented an application to receive payments for en-



environmental services from government. Their request was denied on the grounds that a proof of ownership certificate issued by Indigenous authorities was invalid. The community filed suit and obtained a favorable judgment. The court ordered the government to recognize the ownership certificate provided by the Indigenous authorities, as well as the community's entitlement to payment for environmental services. Other successful cases were subsequently brought against municipal governments in the departments of El Petén and Alta Verapaz that had refused to recognize the valid legal personality of Indigenous communities. This culminated in a 2016 case before the Guatemalan Constitutional Court, which found in favor of the traditional authorities of the community of Chuarrancho in the Department of Guatemala, whose territorial claim extended back to a title obtained in the 19th century and registered in the name of the community. Following the community's 2014 successful suit against the municipal government for the return of its lands, the municipality continued to block the transfer of the lands to the community on the grounds that the community's traditional leaders did not have legitimate authority to administer the lands. In 2016, the community's traditional authorities filed suit against the municipality for its failure to recognize their jurisdiction. The Constitutional Court ruled in favor of the Indigenous leaders and stated that the decision applied not only to Chuarrancho, but to ancestral authorities across the country, for the first time recognizing traditional authorities as legitimate governments within their towns.<sup>59</sup>

Several government incentives programs, which are administered by the National Forest Institute (INAB), support communal lands and forests. These have both production forestry, and a natural forest protection focus. The initial program, PINFOR (1996-2016), covered only "owners" with a minimum of 2 hectares, and excluded many IP's and LC's. The follow-up program, PINPEP (2010), greatly expanded the range of potential beneficiaries, including "landholders", and requires a tenure certificate from the municipal mayor. The program can be considered progressive in that it attempts to include those without formal, registered titles. The latest program, PROBOSQUE (2015), includes Payments for Ecosystem Services (PES) and the eligible beneficiaries fall under a broad range of communal arrangements, both formal

and informal. Demand for these programs has outpaced government capacity to manage them, leading the ongoing Forest Investment Program (Inter-American Development Bank and World Bank) to support institutional modernization and capacity building. Additionally, the FIP provides support to groups with limited technical capacity, in order to assist them to access the program. In the absence of such assistance, meeting the technical and legal requirements for submitting an acceptable proposal is an insurmountable barrier for most communities, especially amongst the most vulnerable groups. In all, community forests receive about one-quarter of the total of all public funds committed to national forest incentives programs.<sup>60</sup>

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

Political will at the national level in support of any new IP and LC agendas is conspicuously absent and, in the current political environment, any major policy or legal reforms are unlikely. There is broad agreement that the political atmosphere in the Congress has been a major obstacle to the consideration and passage of new policies, laws, or reforms that must come from its chambers. Nevertheless, there also appear to be a number of promising opportunities where existing policies and administrative regulations have yet to be effectively implemented, and for which there is a reasonable degree of consensus among key government agencies and IP/civil society organizations on the need to move them forward. These could provide a path not requiring major, high-level political engagement.

Across government institutions, budgets and personnel are mostly inadequate to legally or physically advance IP and LC tenure security. For the government institutions that administer forests in Guatemala (INAB and CONAP), available financial and staff/technical resources limit the reach of the incentives programs and the ability to issue licenses and permits for forestry activities. For its part, CONAP, whose mandate extends across Guatemala's protected areas system – which comprises more than 30 percent of the national territory – has for the last decade received an annual budgetary allocation of between Q90 to Q123 million/yr,<sup>61</sup> or about one-half of what CONAP



and its supporters estimate as the minimum adequate for meeting its responsibilities,<sup>62</sup> and effectively monitoring and halting encroachment and illicit activities in protected areas. Nor is there any expectation that the situation will improve. CONAP requested a budget of Q250 million for 2021 and was allocated Q126 million.

Arguably CONAP and INAB have had laudable success in finding ways to devolve and empower other key stakeholders and institutions to work with them to achieve their objectives and leverage their own limited, public budgets for much greater impact. The arrangements between CONAP and communities to share the responsibilities for the conservation and management of natural resources have matured into proven models. As implemented, they respects community sovereignty, eases the burden on over-stretched government resources, takes advantage of the demonstrated knowledge and capacity of the communities, and provides significant social, environmental, and economic benefits. The history of the development of this model can be traced back three decades, making remarkable the relative stability of the policies and institutional commitments which this represents. For its part, INAB and the forestry incentives programs it administers enjoy significant support and acceptance from forestry sector stakeholders; itself an achievement that rests on significant legal and institutional reforms made more than twenty-five years ago to reshape a failed institution. Barriers to entry for communities' access to the forestry incentives programs, however, still represent real obstacles to IP and LC participation. The successful cases of community access tend to be those where they have received significant external support enabling them to avail themselves of the program.

Effective institutional coordination between MARN and MAGA and INAB and CONAP has been pointed to as a critical element for both mitigating existing institutional constraints, as well as for providing an entryway into potentially feasible pathways forward for the recognition and securing of IP land and forest tenure and enhancing territorial security. This need is filled by the “*Grupo de Coordinación Interinstitucional*” (GCI) – comprised of MARN, CONAP, INAB, and MAGA – which was formed in 2010 to provide a high-level platform for developing the national REDD+ strategy and which continues today.

Equally critical is coordination with and dialogue between GCI and civil society organizations representing IP and LC actors and their interests relevant to achieving their dual objectives of full recognition of their collective rights and forms of traditional governance of these, and sustainable use and conservation of their natural resources. There are several important platforms on the civil society side for this purpose, and that are currently engaged in an ingoing dialogue with the GCI and its members. These include the *Mesa Indígena de Cambio Climático*, *Red de Beneficiarios de PINPEP*, and *Asociación De Comunidades Forestales De Petén* (ACOFOP), among others. There is also the *Grupo Promotor de Tierras Comunales* (“Communal Lands Promotion Group”), a multi-stakeholder group that includes government institutions, NGOs, and academia.<sup>63</sup> The group developed a strategy for advancing the regularization of communal land, however high-level support is lacking and the proposal has yet to be implemented. Municipalities also have key roles to play as they, despite their limited capacities and resources, have had important responsibilities for forest administration and supervision devolved to them. The municipalities are supported in this role by INAB-BOSCOM (INAB’s Municipal and Communal Forest Strengthening Department), which provides a platform and useful example for decentralized administration of forest resources. Another important government institution supporting the land sector is the Cadastral Information Registry (RIC), which with prior World Bank assistance developed the regulations, administrative processes and procedures, and capacity for the Certification of Communal Lands.<sup>64</sup> This capacity is latent and could be brought to bear, given appropriate support for engaging and strengthening RIC for purposes of increasing IP tenure security (i.e., to conduct and certify IP and LC communal lands).

Forest concessions in the Petén are in the process of renewal, with a second concession renewal nearing completion. This effort represents a necessity for achieving the FCPF’s goal of maintaining forest carbon and supporting livelihoods. The process of concession renewal has inevitable political dimensions that make the process charged with varying degrees of uncertainty. It has been a recurring feature of national politics that the concessions come under question from competing interests. One such interest, the Mirador Basin Project, which is promoted

by controversial outside interests as a novel conservation model; interests which have in the past have worked actively to undermine and have cancelled the community concessions, based on unfounded assertions that they are a cause and source of forest loss and degradation, despite the well-proven conservation track record of the community concessions. Reportedly the new concession contracts in process are reportedly similar to the original contracts, despite the recognition that there is ample opportunity and need for improvements,<sup>65</sup> and the expectation is that they will be renewed as they expire. While this expectation is a cause for optimism, it should not be a cause for complacency, given the political dimensions of the approval process. Thus, the great importance and need for vocal and continued high-level support and follow up by donors, civil society and NGOs for concession renewal. The ERPA is one such vehicle, as in the absence of the community concessions a central element for delivering on the ERPA's commitments would be lost.

To take advantage of existing opportunities to advance recognition of IP and LC land and forest rights and provide for greater tenure security, communities and community organizations will need stronger institutional support and engagement on several fronts if the promises of these opportunities are to be realized. A major example, and opportunity, is that provided by the policy approved by CONAP in 2014,<sup>66</sup> the *Política de Administración Conjunta y Gestión Compartida del Sistema Guatemalteco de Áreas Protegidas y de Áreas Naturales de Importancia para la Conservación de la Diversidad Biológica En Guatemala*.<sup>67</sup> This policy has significant, existing agreement and consensus among and between the relevant government and civil society/community organizations. What it lacks is the articulation and technical-administrative definitions of how to put it into practice in a fashion that recognizes, incorporates, and capitalizes on traditional governance and natural resource management knowledge systems and practices; and this, ultimately, is a matter of systematic financial, technical, and capacity building support.

There are numerous opportunities around the country to advance, strengthen, and leverage IP and LC rights. In the community concessions of the Petén, for example, there are needs and opportunities to leverage existing rights and diversify beyond a timber-only orientation (see

endnote 21) to create a broader scheme of “sustainable development of natural resources, diversification of economic activities and products, and a more inclusive development and equitable benefits sharing” that looked at the landscape in a more holistic fashion, and not just the areas productive for their timber values. This requires capacity building for technical natural resources management and internal governance; support for business skills development, marketing and access to financing/credit to enable community-based businesses engaged in agroforestry/silvopasture systems; NTFPs such as honey and tourism; and PES for protection and ecological restoration. Indeed, in a country where poverty rates amongst Indigenous Peoples is so extreme, and natural resources are one of the few assets available to them for purposes of poverty reduction and inclusive development, the imperatives of recognition, formalization, and strengthening of IP and LC rights arguably constitute fundamental needs and enabling condition for achieving not just FCPF/REDD+ goals but also the SDGs. As was noted above, a tested institutional framework for recognition and formalization were developed in RIC with World Bank support. This implies that any individual project or program might take advantage of that latent capacity and work with RIC to provide them the wherewithal to certify communal lands.

To move forward on the opportunity for certification of communal lands, conflict resolution and the expansion of capacity for the mediation of conflicts must also be prioritized. RIC's experience under the World Bank project was that conflicts will be relatively common in establishing boundaries between one community and another's (and/or with private lands). In result, fewer certifications of Indigenous communal lands were accomplished under the project than anticipated. A need for effective, conflict-sensitive processes and procedures for boundary harmonization are common to all programs of such a nature and thus the need for such should be anticipated. In addition, there are common conflicts over access to, and control of natural resources within and between communities. The mediation and resolution of these conflicts constitute another area of need, but rather than the more “formal” processes for boundary harmonization, these perhaps require more support and development of informal conflict resolution mechanisms and capacity within the communities' themselves; perhaps with the accompaniment of ex-

perienced, trained government community mediators of the type potentially found in the Secretariat of Agrarian Affairs.

A recent review of national online news media (2020) highlighted the high degree of endemic conflict over land and resources. This is not a new condition – land and resources have been a contested space for generations in Guatemala. The recent expressions of these conflicts have been episodes of violence including territorial disputes turning violent, leading to the government invoking states of “siege”; the killing of an Indigenous spiritual leader; and unlawful evictions by private actors,<sup>68</sup> among many others. Conversely, the recent suspension by the Constitutional Court of a major mining project until adequate consultation is carried out with the Q’eqchi’ and Kaqchikel peoples, illustrates the potential and the need to strengthen access to legal services in defense of IP and LC rights to take advantage of national and international jurisprudence (e.g., the high courts and regional human rights commissions) to resolve conflicts<sup>69</sup> and the need for stronger safeguards for IP’s and LC’s. This latter is critical in situations such as that found in Guatemala where persistent and pervasive government shortcomings related to the protection and enforcement of tenure rights on community lands by relevant institutions exacerbates conflicts. It also underscores the need to foster a strong anti-corruption culture at all levels of government and government service, especially when deficits in personnel and resources would be expected to persist.

Besides the persistent challenges of inadequate high-level political will and government institutional weakness, several additional constraints challenge the advancement of IP and LC rights in Guatemala. Narcotics traffickers are a serious and growing problem in the Petén, contributing to the expansion of livestock farming and deforestation, and to the deterioration of physical security. Population growth in the Petén, fueled by in-migration from other parts of the country, is a challenge to the sustainable management of natural resources; a situation that underscores the clear benefits of advancing recognition of IP and LC collective land rights outside of the protected areas and strengthening the communal tenure and land/forest governance under and through the concession contracts within the protected areas. Doing so reduces the pull fac-

tors of ambiguous tenure and of institutional weaknesses that preclude the effective presence and protection by the relevant government agencies. Similarly, investing in assisting communities that hold the concessions contracts to leverage these to expand economic benefits, and diversify livelihoods and the local economy as previously discussed above, has the potential to provide multiple benefits in terms of enhanced protection of the natural resources base, poverty reduction and more inclusive economic growth, and increased provision of ecological services.

In addition to the major opportunities noted above, there are numerous others that would in and by themselves concretely expand the benefits from forests for IP’s and LC’s, while advancing/strengthening their tenure rights and security:

- » Cooperatives working on privately held land may represent a pathway to the broad expansion of potential beneficiaries from forest resources;
- » Strengthen and support farmer organizations and local community forest institutions/governance for purposes of improving market access for non-traditional export crops, including provision of extension services, technical capacity, governance-related training/capacity building, and national-level advocacy;
- » Support to community forest enterprise (CFE) to enter/participate in forest product value-chains, e.g., technical, financial, marketing, and business development support;
- » Support for the diversification of community-based businesses beyond forest products to include activities such as tourism, NTFP marketing, agroforestry and PES;
- » Prioritization and direction of forestry incentives to favor environmental/social criteria and natural forest management (over plantations) and ensure that adequate fuelwood continues to be supplied from forests under protection.<sup>70</sup>

There are also several critical needs to be considered – in addition to the conflict resolution/mediation discussed above – for securing IP and LC tenure, and for strengthening/improving the land administration framework in order to achieve durable outcomes within the land/forest/

environmental/rural sectors as regards achieving FCPF/REDD+ objectives and the SDGs. These are:

- » Ensure renewal of community forest concessions in the Petén.
- » Advance women's rights in land, natural resources access, and governance; these face steep traditional biases. This might include raising women's and the public's awareness of the legal framework protecting women's rights and/or the strengthening of women's organizations and women's capacity as stakeholders and participants in decision-making and governance.
- » Capacity building for traditional governance of land and forest resources.
- » Systematic inventories of existing, legitimate titles held by Indigenous communities to their customary lands.
- » Legal support to communities with legitimate titles for the recovery and *saneamiento* of their customary lands.
- » Targeted support (technical and financial) for payment of environmental services for conservation and productive management of collective forest lands.
- » Strengthen government capacity to engage in and effectively implement FPIC processes.

Finally, there are areas of legal and policy reforms that merit consideration, but that are not perceived as “opportunities”

due to Guatemala's challenging social and political context around issues of land and land regularization that would likely render any pursuit of comprehensive legal reforms infeasible. Rather, as noted amongst the lessons learned by the World Bank in its prior engagements in land administration in Guatemala,<sup>71</sup> “*land regularization can be approached incrementally through piecemeal reforms and piloting rather than comprehensive laws*” and concludes that “*it may be more strategic to take an incremental approach with piecemeal reforms, piloting results along the way, and scaling up when instruments have been refined.*” As such, the recommendations are to utilize the World Bank's strategic country dialogues to explore high-level political will and interest in addressing some of the structural issues that perpetuate the long history of civil conflict rooted in land rights, and be alert to emerging opportunities to introduce incremental changes should the potential for more comprehensive reforms not materialize. These include the lack of (i) legal reforms to clarify IP and LC tenure definitions and rights, including explicit recognition of “Indigenous lands; (ii) a broader national land use policy framework to harmonize conflicting and sectoral interests and that, based on existing jurisprudence, would coordinate government institutions' efforts in support of the recognition of IP and LC rights; and (iii) a strong land administration institution to lead the development of such a policy framework and coordinate its implementation; itself a subject implying legal and institutional reforms.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Next steps	Key stakeholders	Scale of investments <sup>72</sup>	Location of investments	Timeframe of investments <sup>73</sup>
1. Implement the Política de Administración Conjunta y Gestión Compartida del Sistema Guatemalteco de Áreas Protegidas y de Áreas Naturales de Importancia para la Conservación de la Diversidad Biológica En Guatemala.	Provide systematic financial, technical, and capacity building support to implement the policy countrywide	<ul style="list-style-type: none"> <li>» Develop agreed strategy for implementation, following an FPIC process</li> <li>» Prepare medium term investment framework for implementation</li> <li>» Support promotion, dissemination, &amp; development of financing commitments to implement medium term framework</li> <li>» Seek GCF and/or GEF co-financing in support of implementation</li> </ul>	GCI IP and LC umbrella organizations, Donor community	Short-term: Small/ Moderate  Medium term: Large	National	Short-term: next steps  Medium to Long-term: implementation
2. Support/strengthen GCI platform as a space for consensus building & strategy development for advancing, strengthening, & leveraging IP and LC rights in function of FCPF/ REDD+ & SDG goals	Expand/strengthen role of GCI into an effective space/forum for coordination & consensus building within & between relevant GoG & national-level IP and LC organizations	<ul style="list-style-type: none"> <li>» Use process to develop agreed strategy for implementation of <i>Política de Administración Conjunta y Gestión Compartida</i> to strengthen &amp; build capacity of participating actors</li> <li>» Provide a dedicated fund for GCI platform for studies/ analysis &amp; hold events/ workshops for development of strategy &amp; medium-term investment framework</li> </ul>	GCI IP and LC umbrella organizations, Donor community	Small	National	Medium-term

Opportunity	Specific investments/actions	Next steps	Key stakeholders	Scale of investments <sup>72</sup>	Location of investments	Timeframe of investments <sup>73</sup>
3. Capitalize upon existing experience & expertise of government land institutions	Support to & involvement of RIC in current/future projects & programs where IP and LC lands are affected, to survey & certify Indigenous/ communal lands	Evaluate RIC capacity & capacity building needs to provide services for certification of IP and LC communal lands in FCPE, environmental, social, other projects/ programs Develop diagnostic tool to be applied systematically where interventions affecting IP and LC lands and tenure are proposed; tool to provide detailed information about diversity of land tenure regimes and land uses, as well as beneficiaries' socio-economic characteristics. Pilot (with RIC's participation) alternatives to increase efficiency & cost-effectiveness of the delimitation, boundary harmonization, & cadastral processes, involving IP and LC communities (e.g., FAO's Open Tenure, & community mapping/ delimitation) Incorporate as component or sub-component in all relevant projects Certification of Communal Lands, with appropriate support to RIC for implementation	<u>RIC</u> IP and LC umbrella organizations Donor community	Short-term: Small  Medium-term: Moderate  Long-term: Large	National	Short-term: RIC evaluation  Medium-term: Diagnostic tool & Pilots  Long-term: Implementation



Opportunity	Specific investments/actions	Next steps	Key stakeholders	Scale of investments <sup>72</sup>	Location of investments	Timeframe of investments <sup>73</sup>
4. Support community forest institutions, farmer organizations, & community forest management & enterprises (CFE) support	<p>Strengthen local capacity (municipal &amp; traditional governance structures) for natural resources administration &amp; governance</p> <p>Invest in including technical/ financial support</p> <p>-Capacity building and development of marketing opportunities and the timber/ NTFP value-chain</p> <p>-Need to diversify products, view the space more holistically, need broader vision of land and resources to create opportunities</p> <p>Research, extension services and marketing support for non-traditional export crops</p> <p>Capacity building on local institutions and governance</p> <p>Support at high-level engagement, including policy dialogues and consultations</p>	<p>» Assess opportunities in current country pipeline* to further support these, as well as certification of communal lands with RIC</p> <p>» Take advantage of process for development of next World Bank Country Partnership Strategy to build support in World Bank &amp; government for inclusion of these as priority needs for poverty reduction, inclusive economic growth, sustainable rural development/ natural resources management</p> <p><i>* Three relevant pipeline projects: (i) Forest Governance &amp; Livelihoods Diversification; (ii) Guatemala Subnational Program for the Reduction and Removal of Emissions; and (iii) Dedicated Grant Mechanism for Indigenous Peoples and Local Communities</i></p>	<p><u>Communities,</u> <u>local</u> <u>institutions,</u> <u>traditional</u> <u>authorities,</u> CSOs/NGOs <u>Municipal</u> <u>government</u> <u>GCI</u></p>	<p>Small: Country Partnerships Strategy</p> <p>Medium: Use of existing pipeline to strengthen</p> <p>Long-term: Large</p>	National	<p>Short-term: Pipeline &amp; Country Partnerships Strategy</p> <p>Long-term: Implementation</p>
5. Support forest concession renewal	Engage with stakeholders in government to prioritize and accelerate forest concession renewal in the Petén	» Use ERPA discussions & World Bank's high-level policy dialogue with government <sup>74</sup> to consistently reinforce the importance of the concession renewals for Guatemala, ERPA, & World Bank commitments (past, pipeline, future)	<u>Government,</u> <u>Communities</u>	Moderate	Petén	Short-term

Opportunity	Specific investments/actions	Next steps	Key stakeholders	Scale of investments <sup>72</sup>	Location of investments	Timeframe of investments <sup>73</sup>
6. Capacity building & institutional strengthening of government for decentralized & devolved natural resources management, conservation, and protection	Strengthen institutional capacity for CONAP to implement, support, & provide oversight on decentralized & devolved natural resources management, conservation, and protection arrangements through community concessions, existing traditional governance systems in IP communal lands, & municipalities Support for INAB & INAB-BOSCOM capacity and resources to address management/conservation objectives & use of forest incentives in communal lands titled to municipalities but managed by communities	<p>» Use process to develop agreed strategy for implementation of <i>Política de Administración Conjunta y Gestión Compartida</i> to define institutional strengthening, capacity building, and possibly, restructuring needs for CONAP and INAB to carry out their roles &amp; responsibilities within a <i>gestión compartida</i> system.</p> <p>» Through GCI platform's fund for studies/analysis, CONAP &amp; community concession stakeholders review &amp; agree on changes in concessions contracts to expand focus beyond timber to embrace communities' landscape &amp; diverse opportunities for economic development based on non-timber values of forests &amp; forest lands</p>	GCI IP and LC umbrella organizations, Local authorities, Donor community	Moderate	National	<p>Short-term: Definition of capacity building/ institutional strengthening needs</p> <p>Medium-term: Implementation</p>

## STATUS OF LAND AND FOREST RIGHTS<sup>75</sup>

Key Element of Tenure Security	Country Findings	Opportunities for policy/action/ investment (Opportunity #)
1. Legal frameworks for tenure rights	Legal framework has gaps in recognizing collective rights. Article 67 of the Constitution (1985) recognizes State obligation to protect land of Indigenous communities. Further, a court ruling <sup>76</sup> gives ILO 169 (ratified by Guatemala in 1996) constitutional status, recognizing IP rights to land. However, few laws, rules, regulations or guidelines operationalize collective rights. IP rights are similar to non-IP rights, with little additional support in recognition or additional rights. Women have Constitutional equal rights protections, though gender-sensitive protections do not exist for community-based tenure regime-specific, community-level indicators (i.e., membership, inheritance, voting, leadership and dispute resolution <sup>77</sup> .	
2. Implementation of legal recognition.	Implementation of collective rights is inadequate. The legal framework is insufficiently operationalized and many communities lack secure tenure categories (i.e., as owners or possessors). RRI estimates an additional 1.4m hectares (13.3% of national territory) where IP and LC rights are not legally recognized. <sup>78</sup>	Capitalize upon existing experience & expertise of government land institutions; Support forest concession renewal
3. Appropriate regulations for land and resource management	No land use planning at national level. The costs and challenges associated with legal forest management are a strong disincentive to smallholders to legalize forest extraction. Restrictive land use regulations may cause communities to ignore CONAP land planning efforts and contribute to animosity between communities and government. Differences across protected areas and tenure regimes complicates natural resources management.	
4. Effective support from responsible government agencies	Government has not shown strong willingness or capacity to strengthen community land rights. At the district level there is evidence of willingness, in efforts to renegotiate concessions in the Petén. INAB and CONAP have financial, staff and technical limitations and cannot completely carry out duties related to incentives programs and the timely issuance of permits and licenses. Women's participation/voice vary considerably.	Implement the Política de Administración Conjunta y Gestión Compartida del Sistema Guatemalteco de Áreas Protegidas y de Áreas Naturales de Importancia para la Conservación de la Diversidad Biológica En Guatemala; Support/strengthen GCI platform as a space for consensus building & strategy development for advancing, strengthening, & leveraging IP and LC rights in function of FCPF/ REDD+ & SDG goals; Capitalize upon existing experience & expertise of government land institutions; Support community forest institutions, farmer organizations, & community forest management & enterprises (CFE) support; Support forest concession renewal; Capacity building & institutional strengthening of government for decentralized & devolved natural resources management, conservation, and protection.

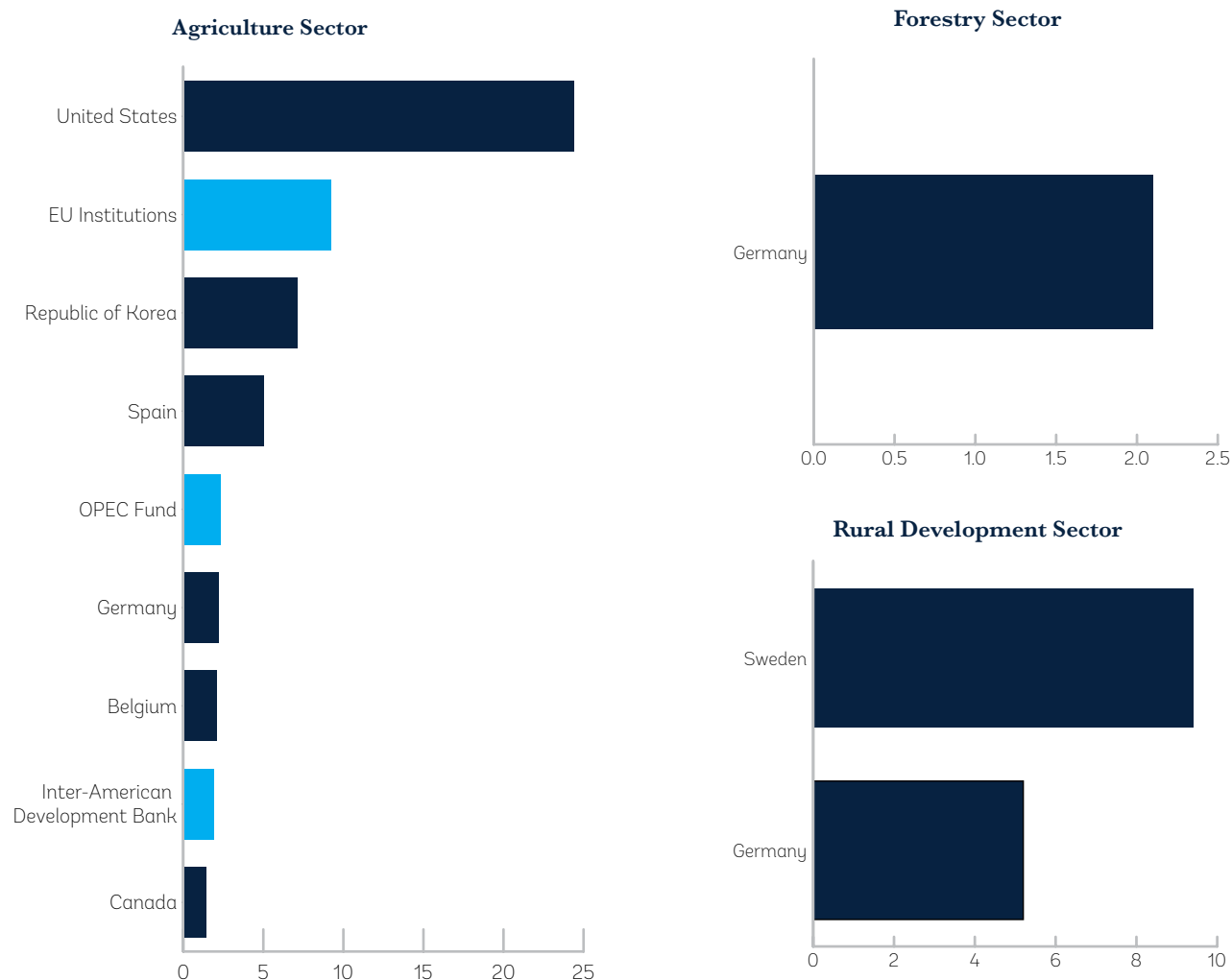
Key Element of Tenure Security	Country Findings	Opportunities for policy/action/ investment (Opportunity #)
5. Empowered and inclusive Indigenous and community governance	Many NGOs are more oriented at conservation than in securing IP rights. In the Maya Biosphere Reserve, NGOs provide technical, administrative and financial support for community concessions. In many areas a parallel system of community/Indigenous authorities (Indigenous mayors, Indigenous councils, local user committees) exists alongside municipal and statutory systems of governance. The Grupo Promotor de Tierras Comunes (group of institutional and CSO actors) and RIC work to engage communities about land/NR rights and facilitate capacity building.	Implement the Política de Administración Conjunta y Gestión Compartida del Sistema Guatemalteco de Áreas Protegidas y de Áreas Naturales de Importancia para la Conservación de la Diversidad Biológica En Guatemala; Support/strengthen GCI platform as a space for consensus building & strategy development for advancing, strengthening, & leveraging IP and LC rights in function of FCPF/ REDD+ & SDG goals; Capitalize upon existing experience & expertise of government land institutions; Support community forest institutions, farmer organizations, & community forest management & enterprises (CFE) support Support forest concession renewal; Capacity building & institutional strengthening of government for decentralized & devolved natural resources management, conservation, and protection
6. Systems for recording community forest tenure rights	Agrarian conflict is exacerbated by inadequate cadastral processes, and the lack of a unified property register in Guatemala. The RIC uses registered land titles - in effect legitimizing past expropriations that resulted in a title deed.	Capitalize upon existing experience & expertise of government land institutions
7. Enforcement of tenure rights	Law enforcement is weak from INAB, CONAP and municipalities. Low institutional capacity to control and prosecute illegal activities. Drug traffickers effectively control some forest areas.	
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Guatemala is a signatory to major international conventions related to safeguards, IPs, etc. However, contradictions and major gaps exist in national law and practice.	
9. Conflict and dispute resolution	Despite a comprehensive institutional framework to resolve agrarian conflicts, land conflicts are very common and in many cases date back a century. Conflict resolution is hampered by lack of coordination and budget gaps. Civil courts are slow and overburdened.	

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>79</sup>

Project Name	Location	Financier	Implementer	Budget (millions, US\$)	Duration
Dedicated Grant Mechanism for IP's and LC's	-	WB	National DGM Committee	4.5	Pipeline
Emission Reduction Program	91.7% of national territory (excludes part of Maya Biosphere Reserve and Municipalities of Morales, Livingston & Puerto Barrios)	WB	Ministry of Environment and Natural Resources (MARN)	52.5	Pipeline
Forest Governance and Livelihoods Diversification	-	WB	National Forest Institute	11.8	11/2019-
Sustainable Forest Management	30 municipalities	IDB	National Forest Institute	9.2	Expected to begin 2021-2022

## OFFICIAL DEVELOPMENT ASSISTANCE (ODA): OVERVIEW OF SECTORAL DISBURSEMENTS TO GUATEMALA, 2018-2019<sup>80</sup>

Guatemala's ODA flows over the 2018-2019 period suggest that major actors in the rural landscape are most active in agriculture sector. Germany is a relatively large donor across all sectors and is the only major donor active in the forestry sector.



Note: Values in millions, US\$ disbursements by multilateral agencies and donor countries.

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Weak governance	National	Government institutions are under-resourced & under-staffed, with implications for service delivery & land/forest rights formalization.	Moderate	Moderate
Political Will	National	Systemic discrimination against Indigenous peoples	High	Low
Weak judiciary	National	Courts are overburdened & slow & resolving conflicts.	High	Moderate
Chronic lack of resources for government institutions	National	Without new funding sources government institutions administering forests & land rights cannot expand their reach or sufficiently meet demand for incentives, technical support & basic services	High	Moderate
Elite capture	National	In some communities, elites exert influence to ensure they benefit most from community forests	Moderate	Low
Pressure from other land uses	National	Mining, new dams & the expansion of large-scale agriculture plantations have increased land pressure on community-forest areas, exacerbating conflicts, especially where formal communal tenure is lacking	Moderate	Moderate
Government prioritizes production forestry & commercial agriculture	National	Government policies, while supporting community forests, tend to prioritize large-scale commercial activities, & communities have minimal involvement in national policymaking	High	Low
Protected areas expansion without community involvement	National	Expansion of protected areas would reduce community access to subsistence & commercial activities in communal forests	Low	Low
Forest concessions in the Petén	Petén	If renewals do not occur, conservation/carbon consequences would be severe	High	Moderate
Impunity for human rights abuses	National	Persistent human rights violations against land/IP territorial defenders highlights a context of impunity that requires government action	Moderate	Low
Internal migration	Petén	Continued flow of migrants into the Petén threatens conservation & tenure security objectives	High	Low
Narco-trafficking	National	Expansion of illicit agricultural activities by narcotraffickers threatens conservation & tenure security objectives	High	Low



## Country Profile

# CHILE

### COMMUNITY FOREST TENURE IN CHILE AT A GLANCE

Total forest area under communal ownership (million ha) / % of forest area under communal ownership/designation	0.86/1% <sup>81</sup>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» National Forest Corporation (CONAF)</li> <li>» Ministry of Agriculture (MINAGRI)</li> <li>» National Corporation for Indigenous Development (CONADI)</li> <li>» National Institute of Agricultural Development (INDAP)</li> <li>» Ministry of Environment (MMA)</li> <li>» Forest Institute (INFOR)</li> <li>» National Tourism Service (SERNATUR)</li> </ul>
FCPF REDD+ Jurisdictions:	5 administrative regions: Maule, Biobio, Nuble, Los Rios, Los Lagos (22% of national territory)
FCPF REDD+ Advancements:	ERPA signed (Dec. 2019)

### COMMUNITY TENURE CATEGORIES IN CHILE<sup>82,83,84</sup>

<b>Indigenous Communities:</b> Groups of IPs can hold property rights on lands purchased by CONADI via the Land Fund established by Law 19.253	<b>Access:</b> Yes <b>Withdrawal:</b> Limited, subsistence rights to forests <sup>85</sup> <b>Management:</b> Yes <b>Exclusion:</b> Yes <b>Alienation:</b> Limited, between communities of same ethnic group
<b>Indigenous Communities:</b> Groups of IPs can hold property rights on lands purchased by CONADI via the Land Fund established by Law 19.253	<b>Access:</b> Yes <b>Due process &amp; Compensation:</b> IP lands may not be sold, seized, taxed, or acquired by prescription except between communities or IP of same ethnic group; must be registered to receive legal protection; limited rights to consent prior to acquisition. <b>Duration:</b> Unlimited - law does not specify durational limits <b>Access:</b> Yes <b>Withdrawal:</b> Yes, for agricultural purposes (law unclear for other purposes) <b>Management:</b> Yes, for agricultural purposes (law unclear for other purposes)

**Agricultural Communities:** Law 5 (1968) provides communities with rights to own and use commonly held land. Not clear whether communities can use these lands for non-agricultural purposes, nor whether trees are included in rights.

**Exclusion:** n.d.

**Alienation:** Limited, voluntary transfers of rights with State authorization

**Due process and Compensation:** State retains authority to expropriate upon paying just compensation

**Duration:** Unlimited - law does not specify durational limits

## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Chile possesses a stable political system, strong economy, and robust legal framework supporting the land and natural resources sectors. The country passed its “Indigenous Law” (Law N. 19.253) in 1993 and ratified International Labor (ILO) Convention 169 in 2008 and the United Nations’ Declaration on the Rights of Indigenous Peoples (UNDRIP), signaling a commitment to Indigenous rights including Free, Prior and Informed Consent and self-determination. Despite these national and international laws, progress at implementation of the laws and recovering ancestral lands for Indigenous Peoples has been slow and inconsistent. Law 19.253 provides the foundation for IP rights to land in Chile and defines the first of two major types of collective land tenure in Chile, the Indigenous Community. Another form of collective tenure is the Agricultural Community, a mechanism enabled by Decree by Force of Law 5 (1968) that applies to collective ownership for purposes of agricultural uses and is applied to nearly a million hectares in the region of Coquimbo. REDD+ advancements for communal tenure security focus exclusively on the Indigenous Community form of tenure.

Indigenous Communities are a legal entity defined by Law 19.253 that allows IPs to obtain individual and collective title to ancestral lands. Indigenous Communities are based on community members having a shared lineage/descent, recognized traditional leader or overlapping land occupation. Indigenous Communities are kept local and small by legal provisions forbidding the formation of larger units, such as federations. The National Corporation for Indigenous Development (CONADI), created through that same law, is charged with implementing IP policy in Chile. Another designation, Indigenous Development Areas (ADIs), is allowed by the law, where the government can create geographic areas where agencies are required to focus on benefits for IPs.<sup>86</sup> These areas are intended to promote development within ances-

tral IP territories; though it should be noted that within these ancestral territories IPs do not always possess legal land rights, rather they encompass state-owned lands and private property, as well as IP lands. As a mechanism for recovering both individual and collective IP lands, the Land and Water Fund was created under Article 20 of the law, with financing from international aid, donations, and the national budget. Through this Fund, CONADI acquired approximately 200,000 hectares on formerly Mapuche legally-owned lands in 2016, mostly for purchase of small farms for individual families.<sup>87</sup> Under the law, IP communities are not eligible for titling unless they possess a historical document such as a community constitution, legal personality, and government approval; and there are no provisions in the law for mapping IP lands. Additional challenges of implementing collective land rights under the law include (i) a lack of implementing regulations that define registration processes and procedures under Article 20(b),<sup>88</sup> and (ii) the law presumes private, non-IP ownership of the lands that government would purchase or expropriate, thus empowering legal challenges that effectively block government efforts, irrespective of the actual legal status of the lands in question.<sup>89</sup> Taken together with ILO 169 and UNDRIP, Law 19.253 can be said to represent a movement toward an improved legal framework, though IPs still lack constitutional recognition, and the implementation of rights has gaps in practice, such as inconsistent consultation for investment projects (i.e., forestry and hydroelectric projects) and insufficient funding for the Indigenous Law Article 20 to purchase lands.

The dominant face of the struggle for IP rights in Chile has for many decades been defined by the conflict between the Mapuche people and the Chilean state. Nearly 1.2 million people identify as Mapuche, comprising over 86 percent of the IP population in Chile<sup>90</sup> and over 6 percent of the country’s total population.<sup>91</sup> The Mapuche have negotiated their autonomy for over two centuries, with the Spanish initially, and later with the Chilean state. Over the 19<sup>th</sup> century, their extensive historical territory

was reduced by military invasions, the seizure of lands and resources and colonization by non-IPs. By the late 1800's, the process of demarcating land for the Mapuche began with the issuance of *Títulos de Merced* ("deed of kindness"), a designation that only conferred rights on a fraction of the Mapuche ancestral lands. Throughout the 20<sup>th</sup> century, the forest sector was greatly expanded on ancestral Mapuche lands, including the designation of forest reserves, the conversion of natural forests to forest plantations (via Decree Law 701,<sup>92</sup> until 2013), and the corporate consolidation of forestland. Since the 1990's, conflict has occurred over forestry operations that effectively replaced native forests with plantations of pine and eucalyptus. More recently conflict has centered over access to water resources - both resource conflicts pitting Chile's neoliberal, market-oriented economy's concepts of resources and development against core IP values and claims. Rights and Resources Initiative estimates that the area in Chile where Indigenous Peoples and local community rights are not legally recognized (despite their customary occupation) at 1.1 million hectares, or 1.5 percent of the national area.<sup>93,94</sup> Freedom House<sup>95</sup> notes the ongoing Mapuche demands for greater territorial rights to land, ancestral waters, and natural resources; issues of police violence; and criticisms from the United Nations and human rights groups of government's uses of antiterrorism laws, which do not guarantee due process, to prosecute acts of violence by Mapuche activists.

The recent plebiscite (October 25, 2020) on constitutional reforms was overwhelmingly approved by the Chilean electorate, casting doubt on how questions of ancestral land claims and autonomy for Indigenous groups will be resolved in the near future.<sup>96</sup> Observers have noted that Chileans recognize that the historic treatment of the Mapuche has been unjust, and thus, under the new constitution there may be scope for proposals originating from some Mapuche leaders. These include proposals for a constitution like Bolivia's and Ecuador's that would recognize Indigenous Peoples' "nations" within the state, and would recognize collective territorial rights. The recognition of such rights would conflict with the forestry industry, which accounts for 8 percent of the country's exports. Chile's forestry companies have planted about 2.4 million hectares, most of them in Mapuche lands that were violently seized in the late 19th century.<sup>97</sup>

This centuries-old conflict between the Mapuche people and the State is an ongoing issue with IP and LC tenure security in Chile and is outside the scope of REDD+ investments, given its highly sensitive nature. Further, until such time as the new Constitution is approved and any new, major legislation needed to implement it as regards IP and LC collective land rights and IP autonomy is in place, there would be no certainty as to the enabling framework (legal and institutional) for investments in advancing collective land rights.

The current FCPF REDD+ program in Chile costs US\$26 million, and the program focuses on land tenure regularization/formalization, with some efforts focused particularly with IP lands. The ER-Program Document anticipates three areas of conflict that could potentially impact the ER-Program: 1) Conflicts over projects related to natural resources (i.e., hydroelectricity); 2) Conflicts involving CONAF and their jurisdiction over lands that are also claimed by IPs; and, 3) Territorial conflicts over Mapuche land claims. The historical context regarding the Mapuche-government conflict suggests that most of the ER-Program activities will be welcomed by IP communities, especially those promoting forest restoration and conservation. For the most part, conflicts generally involve the forest industry and specific lands – impacts on the ER-Program will therefore depend on the specific lands included in programmatic activities and for the most part are likely to be minimal. In any case, consideration should be given to how much further these activities, especially those related to tenure clarification and regularization, should be pursued at this time given that constitutional change could mean that their outcomes might not be durable. Care must be taken to be sensitive to the underlying conflict present throughout the ER-Program jurisdiction.

## SYNTHESIS OF OPPORTUNITIES TO SECURE AND LEVERAGE COLLECTIVE TENURE:

Efforts to strengthen land and forest tenure security in Chile begin from an already advanced position. The vast majority of land parcels are regularized with sufficient access to land information, the legal framework is relatively clear with regards to rights (though not always implementation), and the government's capacity to implement laws

and programs through CONAF and CONADI is, despite some gaps, mostly sufficient. Due to the political nature of the Mapuche-government conflict, these recommendations do not address the conflict directly but focus on activities and investments that likely have broad support, such as increasing access to forestry incentives programs for women and IP governance. Opportunities that are visible under the current legal framework include:

- » Initiatives that support IP governance and include capacity building, technical NRM support/training and legal support for conflict resolution;

- » Pilot initiatives to test processes and procedures for formalization of collective land rights; and,
- » Update Chile's nationally determined contributions (NDC) to include collective tenure insecurity.

These will need to be revisited at such time as the new Constitution and subsequent new legislation are drafted.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investment <sup>98</sup>	Location of investments	Timeframe of investments <sup>99</sup>
Expand implementation of IP land rights	» Support pilot scale initiatives to test and systematize technical/administrative processes and procedures for formalization of collective land rights	IP communities, CONADI	Moderate	National	Medium-term
Government institutional capacity building and incentives programs	» Support capacity building, and strengthening of implementation of FPIC processes » Increase participation of IP and LC women by creating forestry incentives programs/financing specific to women within context of collective lands	Government institutions (CONADI, CONAF)	Large	National	Long-term
Initiatives and efforts to strengthen IP governance	» Capacity building, technical NRM support/training and legal support for conflict resolution	IP communities, CONADI, CONAF	Moderate	National	Long-term
Update National Determined Contribution to include the legal recognition and strengthening of Indigenous peoples, Afro-descendants and local communities' tenure rights	» Inclusion of commitment to people with insecure collective tenure under the "social pillar" of Chile's NDC » Strengthen implementation criteria in Section 3.2 to include criterion recognizing IP and LC rights and tenure in implementation of NDC; » Include Indigenous and community gender focus to Section 3.2d	Council of Ministers for Sustainability & national policymakers	Small	National	Short-term

## STATUS OF LAND AND FOREST RIGHTS<sup>100,101</sup>

Key Element of Tenure Security	Country Findings	Opportunities for policy/ action/investment
1. Legal frameworks for tenure rights	Chile's legal framework appears to be somewhat adequate to secure communal forest rights. However, the Indigenous Peoples Act (Law 19,253) has shortcomings and IPs do not have constitutional recognition.	Update National Determined Contribution to include the legal recognition and strengthening of Indigenous peoples, Afro-descendants and local communities' tenure rights
2. Implementation of legal recognition.	Process of formalization is unclear and implementing regulations outlining a precise procedure are missing. <sup>102</sup> CONADI's Land Fund had acquired 200,000 hectares by 2016 for both IP individual (+family) and collective ownership.	Expand implementation of IP land rights
3. Appropriate regulations for land and resource management	Overall, regulations are not a major source of conflict on IP lands, except that they at times incentivized conversion to plantations which, in IP ancestral territory, has exacerbated conflict.	
4. Effective support from responsible government agencies	Trust is a major issue between IPs and Government. Interviews with Mapuche stakeholders (politicians, researchers, forestry producers, etc.) indicate insufficient govt. efforts to strengthen tenure and resolve conflict, and participation mechanisms are insufficient. <sup>103</sup> State policies are, in part, contradictory in that they allocate resources to acquire land on behalf of IPs but promote and execute projects that adversely affect those same IPs. Positively, CONAF has instituted a Unit of Indigenous and Social Affairs (UAIS) which focuses on inclusion and participation of IPs in formulation and implementation of sectoral plans, projects and programs.	Government institutional capacity building and incentives programs
5. Empowered and inclusive Indigenous and community governance	IP community governance capacity is strengthening over the decades as they repeatedly mobilize various means of protest and engagement with the forestry companies, the government and the general public. Traditional authorities are not recognized under the Indigenous Peoples Law. IP capacity for natural resources management and involvement in land use planning is unclear.	Initiatives and efforts to strengthen IP governance
6. Systems for recording community forest tenure rights	The land registry system keeps a record of and histories of all properties in the country. Information is generally accurate, complete, updated and secure. However, not all properties have been entered into the system and the system does not differentiate between collective and individual ownership. Additionally, the Real Estate Registrar does not have legal authority to verify titles, leading to errors and overlapping registrations. Improperly registered lands accounted for 13% of all lands in 2007. <sup>104</sup> Law 19.253 requires that IP lands are registered in CONADI's Land Register.	
7. Enforcement of tenure rights	Illegal logging in high ecological value forests is reported in the literature as late as 2013, <sup>105</sup> highlighting gaps in enforcement more generally across forestlands.	

Key Element of Tenure Security	Country Findings	Opportunities for policy/action/investment
8. Protection of collective tenure rights in relation to other forms of tenure and land use	State authorities are required to listen to and consider opinion of IP communities and organizations recognized by the Law with regard to any issue related to IP matters (Law 19253 Article 34). IPs have rights to consultation (Decree No. 66/2013). State required to undergo prior and appropriate consultation processes with Indigenous peoples and communities concerning projects or acts (legislative or administrative), including projects that could affect them requiring EIA under Law 19300 (Regulations on the Procedures for Indigenous Consultation Articles 1,6,7,8). Constitution states the rights of persons and communities (including IP) to seek judicial protection by the appeals court, including specifically water rights and right to live in an environment free of pollution, when constitutional rights are affected due to arbitrary or illegal acts or omissions by public or private actors (Constitution Articles 19, 20, 24). There are historical cases of large projects displacing IPs and insufficient consultations over development projects.	
9. Conflict and dispute resolution	Conflicts occur between the Mapuche people and extractive industries, including burning of forests to prevent logging <sup>106</sup> , crops burned, roads blocked and vandalism of forestry vehicles. The Inter-American Court of Human Rights <sup>107,108</sup> and UN Special Rapporteur on human rights and counterterrorism <sup>109</sup> have ruled against and spoken out against Chilean authorities for using the Anti-terrorism law against IP protesters. CONADI has mechanisms to resolve disputes, though results are mixed in practice.	

### SIGNIFICANT PROJECTS IN PIPELINE<sup>110</sup>

Project Name	Location	Financier	Implementer	Budget (Millions, US\$)	Duration
REDD+ Emissions Reduction Program	Maule, Biobio, Nuble, Los Rios, Los Lagos	FCPF-through WB	CONAF	26	2019- 2025



## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Constitutional framework on IP collective land rights and autonomy potentially undergoing revision	National	Chilean voters approved drafting of a new Constitution, and there is potential that IP collective land rights and increased autonomy may be recognized under it.	High	Non-existent
Insufficient national political will to resolve IP land/NR conflicts	National	After the Bachelet government's suggestions for ameliorating the present conflict were rejected by IP leaders in 2017, it is unclear whether there is political will to further the issue.	High	Low
Insufficient capacity for CONADI to implement initiatives aimed at strengthening IP governance	National	CONADI may lack capacity to implement new programs; can be partially mitigated by increasing resources to CONADI in order to implement IP capacity building/training, etc.	High	Moderate
Conflicts between Mapuche, other IPs and Chilean state limits implementation of REDD+ activities related to tenure	National	Territorial conflicts between the Mapuche people and owners of specific lands may be exacerbated by REDD+ activities and limit implementation of these activities; additionally, the Mapuche conflict may be exacerbated by ER-P activities benefiting the forest industry.	Moderate	Low

## Country Profile

# DOMINICAN REPUBLIC

### COMMUNITY FOREST TENURE IN DOMINICAN REPUBLIC AT A GLANCE

Total area under communal ownership (million ha) / % of national territory under communal ownership	Insignificant <sup>111</sup>
Forest area under communal ownership (million ha) / % of nation's forests under communal tenure	Zero or insignificant
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Dominican Agrarian Institute (IAD)</li> <li>» Comisión Permanente de Titulación de Terrenos del Estado (CPTTE)</li> <li>» Ministry of Environment and Natural Resources</li> <li>» Ministry of Agriculture</li> <li>» Dirección de Bienes Públicos</li> <li>» Jurisdicción Inmobiliaria</li> <li>» Ministry of Economy, Planning and Development</li> <li>» Municipalities</li> </ul>
FCPF REDD+ Jurisdictions:	Entire national territory, except for some small islands, keys and islets (47,733 km <sup>2</sup> of the country's 48,198 km <sup>2</sup> ); National ER-Program: 5 prioritized areas
FCPF REDD+ Advancements:	ERPA not yet signed

### COMMUNITY TENURE CATEGORIES IN THE DOMINICAN REPUBLIC

<b>Private Property:</b> There is no identified community-based tenure regime in the Dominican Republic	Access: N/A Withdrawal: N/A Management: N/A Exclusion: N/A Alienation: N/A
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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:<sup>112</sup>

The Dominican Republic is a country that is likely to experience significant impacts from climate change, and the GDR has already taken substantial steps toward preparation of initial policy and planning level responses. The Dominican Republic is a member of the Convention on Biological Diversity, the Convention to Combat Desertification and the United Nations Framework Convention on Climate Change (UNFCCC). It also ratified the Kyoto Protocol (2012) and the Paris Agreement (2016). The country is a member of the mechanisms created by the Convention on Climate Change, including the REDD+ Mechanism. In terms of important actions in climate finance, the Dominican Republic was a part of the Caribbean Constituency and formed part of the first Governing Committee of the Green Climate Fund, among others. Strategic Aims of REDD+ in the Dominican Republic: (1) To strengthen the legal and institutional framework for the conservation of the country's natural heritage and the sustainable use of natural resources (6 strategic actions) (2) To establish, strengthen and apply public policies in order to limit and/or contain the expansion of agricultural and livestock frontiers and the infrastructure in forest areas (4 strategic actions) (3) To promote natural resource management models that contribute to forest conservation and sustainable use and the increase of forest coverage.

In the Dominican Republic, there is no collective land tenure regime. The lands are owned either by private individuals (individuals or corporations) or owned by the State. Individuals right of property is legally recognized when they have registered that right in the corresponding Registry of Titles, which in turn issues a certificate that endorses said registration, in accordance with the procedures established by Law No. 108 -05 of Real Estate Registry. The State is legally presumed the original owner of all lands,<sup>113</sup> as established in Principle III of the aforementioned Real Estate Registry law. The State may also hold ownership because it has obtained them through the expropriation procedure by cause of public utility, provided for in Law No. 344 of 1943 on Expropriations and its amendments. The Constitution further provides that it is “in the public interest that land be devoted to useful purposes and that large estates (latifundios)

### BOX: KEY LEGISLATIVE AND LEGAL ENACTMENTS SUPPORTING LOCAL COMMUNITY RIGHTS TO LAND AND NATURAL RESOURCES

The main laws regarding forestry are:

- » **Forest Sectorial Law for the Dominican Republic** (No.57-18), that regulates and promotes sustainable forest management; and,
- » **Law for Establishing Payments for Environmental Services** (No. 44-18), aiming at promoting environmental services in key critical areas.

**The 1999 Forestry Law** (Law No. 118-99) sets out the definitions of forestland, how forest lands are to be registered, regulations for commerce and industry as related to forest lands, regulations for the protection of forest lands, programs for investment, education and incentives to expand forest lands, as well as sanctions and judicial procedures to adjudicate violations of the law

**The Environmental and Natural Resources Law, No. 64-00 (2000)** governs the Dominican Republic's environment and natural resources, including forests and related natural resources. Forestry regulations issued in 2001 under Law No. 64-00 include regulations concerning payment for ecosystem services, forest land tenure, forestry industry, forest conservation, research and management, and the government's administrative roles

be gradually eliminated,” and that the social policy of the state shall promote land reform and effectively integrate the rural population to the national development process by encouraging renewal of agricultural production (GDR Constitution 2010).

The majority of the land in the Dominican Republic is not registered, and even if land tenure rights are registered, tenure is not guaranteed. The constitution does not address specifics regarding Indigenous, Native or community rights to land.<sup>114</sup>

The land tenure system in the Dominican Republic presents great difficulties in accessing formal ownership rights. Even where ownership is obtained, there may still be a

lack of legal clarity when it comes to rights over forest resources.

For the untitled land to be legally consolidated, or admitted as *de facto* possession or informal possession, opposable to everyone including the state (whom the law presumes as the original owner), the latter must comply with the conditions established in the Civil Code and the Real Estate Registry Law. Most people in the Dominican Republic access land through inheritance, gifts within families, state land reforms, or land purchase. In some parts of the country, unregistered land has been expropriated for development without warning or compensation. Generally speaking, customary practices are recognized and adopted, regardless of the legal provisions that establish a formal system of registration of property rights, which mainly involve the non-formal occupation of land, whether rural or urban, by individuals who do not have access to land, through conventional legal procedures. Prolonged possession can be demonstrated by multiple generations of occupancy if it can be documented. As of 2012, only about a quarter of the country's rural land – primarily large and high-value holdings – was estimated to be registered.<sup>115</sup>

The legal framework governing forests requires forest management plans and delineation of forest boundaries. To date, forest offices have lacked the financial and human resources to implement the laws. The boundaries of national forests and protected areas are largely mapped, but not physically delimited on the ground, and communities are not aware of the precise limits of the protected areas. Very few management plans have been created. Only 10 to 15 percent of the Dominican Republic's forest is on private land.<sup>116</sup>

Indigenous, Native and community land rights are not explicit in the legal framework. No community-based forest tenure regime could be identified.

The unequal distribution of land has deep historical roots that have proved difficult to eradicate despite land reform efforts. Over the last 50 years, political upheaval and corruption have hindered a series of efforts to redistribute land and provide greater security of tenure. In the last five years, the Dominican government has instituted several

reforms, including the development of a cadaster with digitized property titles and the establishment and expansion of 23 land registry offices across the country. Another modality of recognition was created through a Provisional Title from the Dominican Agrarian Institute (IAD), IAD however, remained the legal owner of the land, and the beneficiary cannot judicially use this to defend rights against a third party. In 2012, the government created the State Lands Titling Commission (CPTTE) through Decree 624-12, with the aim “of reducing until eliminating the phenomenon of the extralegality of land tenure, especially of those on which the State has developed agrarian and housing reform projects.”<sup>117</sup> CPTTE was developed to work with the Dominican Agrarian Institute (IAD), Bienes Públicos, Consejo del Azúcar, and other institutions to address the limited number of beneficiaries of state land grants with titles. GDR has implemented reform programs focused on developing institutional frameworks and strengthening government agencies and public administration. As part of its overarching program to modernize the justice sector, the Dominican Republic Supreme Court modernized its property title registration process through a US \$10 million Inter-American Development Bank (IDB) loan to address deficiencies and gaps in the land administration system and strengthen land tenure security.

Engagement of local communities in forest management in the Dominican Republic has historically been uneven. In the 1990s, the government used the army to resettle numerous communities in newly identified protected areas and in buffer zones outside those areas. In many cases, little, if any, public consultation took place, and residents reported confusion regarding the park boundaries and the nature of newly designated protected areas and parks. However, in at least one study of four communities, residents reported an awareness of forest conservation principles and expressed disappointment that they were resettled rather than included in management plans for the protected areas. More recently, government programs have included local communities, although the programs are primarily plantation and reforestation programs, with NGOs serving as the managers of the forestation campaigns. Failure of climate and sustainability programs can be traced to the lack of inclusion of the governance mechanisms and traditional knowledge of the different areas.<sup>118</sup>

In some parts of the country, unregistered land has been expropriated for development without notice or compensation. Long-standing titling practices, such as issuing provisional titles that are never completed, or providing title to land to multiple owners without requiring individualization of parcels, have created substantial ambiguity in rights and undermined the reliability of land records. The country has struggled to control fraud in the creation and registration of land titles, including illegal operations within the government agencies responsible for issuing titles. In 2009, a land title forgery ring was uncovered. Land expropriation has been relatively common in the Dominican Republic, primarily related to infrastructure development, payment of compensation in accordance with the Constitution and law has been unreliable. In some cases, landowners wait years for payment, or remain unpaid, and evictions are common and sometimes violent. Involuntary resettlement was widespread in the Strategic Environmental and Social Assessment (SESA) public consultation focus groups.

Dispute resolution mechanisms are in place, including local judge-like authorities and higher tribunals (related to

Torrens system) to resolve disputes. Cost poses a barrier for smallholders. Corruption and land grabbing have occurred though the system. The courts recently resolved a dispute in a protected area in which the claimant was rebuffed for wanting to develop land.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

Collective tenure is not recognized in the Dominican Republic, although there are at least two exceptions where NGOs have supported the collective ownership of plantation farming land. Therefore, the opportunities for engaging and investing in the Dominican Republic to support local forest-dwelling communities are oriented around strengthening private, individual tenure. This includes supporting ongoing initiatives of rural titling, advancing community participation and inclusion into REDD+ initiatives, and strengthening legislation for land use and resource rights.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>119</sup>	Location of investments	Timeframe of investments <sup>120</sup>
Scale up Rural Titling Activities	Scale up rural titling efforts to build on successful experiences. Dispute resolution seems to work well enough to support this; potentially do work in protected areas to support resolution of overlapping claims in buffer zones	IAD CPTTE MARENA	Large	National	Long-Term
Advancement of participatory processes	A Public Consultation activity of key stakeholders in the summer of 2019 reported that the main challenges or problems to DR's REDD+ programs included advancement of participatory processes of the Environment and Social Management framework.	CSOs	Small	National	Long-term
Strengthening Implementation of Key Land Use Legislation	Strict application of the existing legislation on the change of land use and valuable zoning of land use may make a positive contribution to reducing the loss of forest cover caused by the expansion of infrastructures of an urban, road and industrial type	IAD, Ministry of the Environment, Ministry of Economy, Planning and Development Municipalities	Large	National	Long-Term

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>119</sup>	Location of investments	Timeframe of investments <sup>120</sup>
Strengthen Legislation for Resource Rights	Review and drafting of legal and administrative instruments to strengthen the legal framework visa-vis matters related to: ownership of natural resources, land tenure and forest ownership (especially in protected areas) profit-sharing derived from removal or storage of natural resources in forests (emphasis on carbon)	IAD, Ministry of the Environment	Moderate	National	Long-Term

## STATUS OF LAND AND FOREST RIGHTS<sup>121</sup>

Key Element of Tenure Security <sup>122</sup>	Country Findings	Opportunities for policy/ action/investment
1. Legal frameworks for tenure rights	There is no identified community-based Forest Tenure regime in Dominican Republic. The constitution does not address specifics regards Indigenous, native or community rights to land (Constitucion de la Republica Dominicana updated by 2015). The land tenure system in the Dominican Republic presents great difficulties in accessing formal ownership rights and even where ownership is obtained, there may still be a lack of legal rights over forest resources. <sup>123</sup>	Clarify legal rights over forest resources Improve gender equity and rights
2. Implementation of legal recognition.	There are large barriers to formal recognition in Dominican Republic, and on top of that no meaningful customary recognition. The state exerts authority over all non-registered lands leaving communities vulnerable. Expropriations are common and only 10%-15% of forests are registered as privately held.	Implement massive land tenure clarification campaign
3. Appropriate regulations for land and resource management	The lack of a specific sectoral Forest Law is creating legal conflicts in the sector. <sup>124</sup> Deficiencies of public policies and forest institutional framework was listed by focus groups for the REDD+ ERP by stakeholders as two of the leading causes of deforestation. Policies are enacted without consideration to land tenure issues.	Address land expropriations, institutional weaknesses, lack of effective enforcement of regulations
4. Effective support from responsible government agencies	There is a history of corruption by the Dominican government when it comes to support for forest rights that seems to be very difficult for the public to overcome. There have been several institutions created to support forest rights and access that have not been successful at delivering formal recognition at-scale.	Support IAD and Agroforestry projects; Build capacity for protected areas management
5. Empowered and inclusive Indigenous and community governance	Engagement of local communities in forest management in the Dominican Republic has historically been uneven. In SESA related public consultation activities, some communities reported an awareness of forest conservation principles and expressed disappointment that they were resettled rather than included in management plans for the protected areas. More recently, government programs have included local communities, although the programs are primarily plantation and reforestation programs, with NGOs serving as the managers of the forestation campaigns.	Include local community participation in project implementation
6. Systems for recording community forest tenure rights	Community Forest Rights do not exist formally or in practice in Dominican Republic.	Support more accurate mapping needed to clarify rights as many overlapping claims that occur due to low resolution of data
7. Enforcement of tenure rights	Enforcement of standards designed to protect local community and environmental interests has been limited and there is often ambiguity in rights due to lack of formal title for most forest inhabitants.	



Key Element of Tenure Security <sup>122</sup>	Country Findings	Opportunities for policy/action/investment
8. Protection of collective tenure rights in relation to other forms of tenure and land use	There has been an emergence of conflicts of interest between multiple actors and sectors, failure to establish an agreement for the development of sustainable projects, and authoritarian measures implemented by the GRD.	
9. Conflict and dispute resolution	The Dominican Republic judicial system includes the Constitutional Court, the Supreme Court of Justice, three courts of appeal, 26 provincial Courts of First Instance, one Court of First Instance in the National District, Justices of the Peace in the country's 72 municipal districts, and a specialized court system that includes Land Courts. The judicial system recognizes alternative dispute-resolution (ADR) procedures as a legitimate method of resolving disputes.	Address the question of cost as a barrier for smallholders

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>125</sup>

Project Name	Location	Financier	Implementer	Budget (millions, US\$)	Duration
FCPF Carbon Fund: DR ERP	National	World Bank - FCPF	Min. Env. & NR	25	10/20 - NA
Sustainable Agroforestry Development Program	Rural Areas	Inter-American Development Bank	Min. Env.	150 (loan)	6/18-TBD
DR Resilient Agriculture and Integrated Water Resources Management	National	World Bank	Ministry of Agriculture	80	2018-2024
Integrated productive landscapes through land use planning; restoration; and sustainable intensification of rice in Yaque and Yuna	Yaque and Yuna	World Bank	-	4	Pipeline, TBD
Dominican Republic. FCPF REDD+ Readiness Preparation Project	National	World Bank	Ministry of Agriculture	3	Pipeline, TBD

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction			Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Legal framework does not support collective rights recognition	National	Collective/communal rights regime is not enabled.	High	Low
Durability issues raise question of utility of formalizing tenure rights in near term	National	The land administration system does not yet provide for tenure security, even if land tenure rights are registered.	High	Low
Institutional culture and capacity for stakeholder engagement, participatory processes, and FPIC	National	Engagement of local communities in forest management in the Dominican Republic has historically been uneven, with failure of climate and sustainability programs traced to lack of inclusion of the governance mechanisms and traditional knowledge in/ between different areas.	High	Moderate

# Country Profile

## MEXICO

### COMMUNITY FOREST TENURE IN MEXICO AT A GLANCE

Total area under communal ownership (million ha) / % of national territory under communal ownership	101 <sup>126</sup> / <b>52%</b>
Forest area under communal ownership (million ha) / % of nation's forest area under communal tenure	45.47 <sup>127</sup> / <b>&gt;60%</b> <sup>128</sup>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Secretary of Environment and Natural Resources (SEMARNAT)</li> <li>» National Forestry Commission (CONAFOR)</li> <li>» Agrarian, Territorial and Urban Development Secretariat (SEDATU)</li> <li>» National Agrarian Registry (RAN)</li> </ul>
FCPF REDD+ Jurisdictions:	States of Campeche, Chiapas, Jalisco, Quintana Roo and Yucatan (11 specific intervention regions)
FCPF REDD+ Advancements:	ERPA not yet signed

### COMMUNITY TENURE CATEGORIES IN MEXICO<sup>129</sup>

<p><b>Agrarian communities (<i>comunidades</i>):</b> Generally, Indigenous Peoples who have historically inhabited a region and share religion, language and governance institutions own land under this regime. They hold forests and pastures in common while individual rights holders (<i>comuneros</i>) farm plots. Governance is by a communal assembly and a council of authorities. Land transactions between <i>comuneros</i> is allowed but third-party sales are not legal (though conversion to an <i>ejido</i> is allowed).</p> <p><b><i>Ejid</i>os:</b> developed from agrarian reforms; constituted when a group of families claimed rights over a territory. Rights holders are called <i>ejidatarios</i>. 1992 Constitutional amendment allows for privatization of <i>ejidal</i> lands (excluding commons). Governance is by assemblies and/or council of authorities.</p>	<p><b>RRI Tenure Type:<sup>130</sup> Owned</b>  <b>Access:</b> Yes  <b>Withdrawal:</b> Yes  <b>Management:</b> Yes  <b>Exclusion:</b> Yes  <b>Alienation:</b> Only for lease and collateral; not for sale  <b>Due process and Compensation:</b> Yes, and compensation is required  <b>Duration:</b> Unlimited</p> <p><b>RRI Tenure Type: Owned</b>  <b>Access:</b> Yes  <b>Withdrawal:</b> Yes  <b>Management:</b> Yes  <b>Exclusion:</b> Yes  <b>Alienation:</b> Yes<sup>131</sup>  <b>Due process and Compensation:</b> Yes, and compensation is required  <b>Duration:</b> Unlimited</p>
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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

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The community forestry sector in Mexico is considered among the most advanced in the world. Titling for both arrangements (*ejido* and community) consider these communities as single entities, rather than groups of communities in a territory. In both agrarian communities and *ejidos*, forest commons are excluded from privatization. Collective ownership of land in the forms of *ejidos* and agrarian communities comprises over half of the national territory and forest area. Forest management plans are in place in over 2,400 communities,<sup>132</sup> mostly *ejidos*, and around 35 percent of these are active in some aspect of forest operations,<sup>133</sup> and an increasing number of forest communities have assumed significant control over their forests through their community forest enterprises (CFE).

The capacity of communities, the quality of their forest resources, and the efficacy of their CFEs at supporting local livelihoods vary widely across Mexico. Forests owned by communities are managed through institutional arrangements that vary from community to community. The *Secretaría de Medio Ambiente y Recursos Naturales* (SEMARNAT) has a supervisory role, requiring communities to submit a forest management plan before they can receive a permit for commercial operations.<sup>134</sup> The main decision-making body in *ejidos* and *comunidades* is the General Assembly. Community-level governance is crucial, as government from the local to national-level in Mexico is limited in both resources and capacity.

One challenge for communities in Mexico is to broaden the economic inclusion within *comunidades* and *ejidos*. Both communities and *ejidos* have inhabitants who have been allocated farm plots or a house site but do not have rights to forests (*avecindados*). As decision-making participation and control of forest commons is limited to a fixed number of *comuneros* and *ejidatarios*, more and more community members live without economic security related to collectively controlled land and forests. Further, while statutory land rights in Mexico are roughly equal for women, most control over *ejidal* land is held by men - out of an estimated 4.2 million *ejidatarios(as)* and *comuneros(as)*, only 19.8% are women<sup>135</sup>. In rural areas, traditional customs and practices (*usos y costumbres*) are strong, and land inheritance by sons

is very common. As such, few women are voting members and most do not hold use-rights to forests and are thus not allowed to vote on regularization and tenure regimes. This opportunity gap for women and youth leads to a weakening of the social and economic fabric of communities as *avecindados* out-migrate. At the same time, *comuneros* and *ejidatarios* are often elderly and rely exclusively on support from forest-based activities, and there is little appetite at the community level for a revision of community rights governance, especially imposed from outside the communities. As a result, opportunities that are sensitive to traditional governance structures and minimize conflict – i.e., that work closely with and through the communities' traditional governance in a fashion that does not raise the concern that “outsiders” are imposing their agenda and undermining traditional governance – include providing support to *avecindados*, women and others to participate in community-controlled forest management (including CFEs) as service providers, and to support their participation in value networks that provide value-addition to local, primary production. In this way, more people from communities can participate in and benefit from local, forest-based economic activity and the traditional governance system.

An additional issue facing communities is that national political and government support for community forestry has declined in recent years. A steep decline in the National Forestry Commission's (CONAFOR) budget from 2017 has continued with Andrés Manuel López Obrador, impacting activities and programs that support community forestry and *ejidos* and *comunidades*.<sup>136</sup> Indeed, under the Obrador administration, the budgetary and programmatic focus has shifted even further from the forest sector, which, at over half under communal control, has seen vastly declining support for community forests. Further, the administration's anti-corruption messaging has effectively limited support to civil society organizations that support community forests, while individual owners continue to obtain government subsidies and incentives.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

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In order to leverage benefits from collective tenure for communities and taking into consideration deficiencies

in national willingness and government capacity, donors should consider opportunities in Mexico that improve social inclusion and more widely distribute benefit sharing beyond strict tenure-related interventions. Expert interviews indicated that community decision-makers would likely support investments and activities targeting those without rights to participation or to commons management, as these people are integrated into the families and communities of the *ejidatarios* and *comuneros*, thus the social and economic benefits are widespread and shared by all members. These investments must be sensitive to the specific interests and needs of communities and include:

- » Capacity building/technical trainings
- » Investment (grants and loans) and business development for micro-enterprises targeted at socially disadvantaged groups.
- » Community forest management technical support

Mexico's strong civil-society and international NGO presence can support efforts across a wide range of communities and represent significant existing technical and out-

reach capacity. The above three categories of investments are synergistic and expected to be carried out in parallel in projects and programmatic activities. For example, the needs related to community forest management can be, in part, met through outside support (i.e. government staff, private foresters) and through capacity building/training of local people interested in working in forest management (i.e. forest technicians). As community forests benefit from management, opportunities for community-based forest enterprises that add value to primary forest products emerge, multiplying the economic benefits of forest management investments.

An emerging opportunity related to strengthening and the enabling conditions for collective rights and leveraging benefits is to revise the rules and regulations that govern community forest management. SEMARNAT can lead this revision in order to better align the regulatory environment with concepts of “silvicultura comunitaria” and enhance potential economic impacts of community forest management.

## ENTRY POINTS AND SPECIFIC INVESTMENT OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>137</sup>	Location of investments	Timeframe of investments <sup>138</sup>
Capacity building/technical trainings related to community forest enterprises	<ul style="list-style-type: none"> <li>» Technical trainings and long-term support to increase participation in service-provider and business roles within CFE (i.e., accounting, forest technicians, equipment operators and mechanics, tree fellers).</li> <li>» Grants and loans targeted at micro-enterprises and small businesses</li> </ul>	<u>Women, <i>avacindados</i></u> (those lacking decision-making authority and economic opportunities in <i>ejidos</i> and <i>comunidades</i> ), youth, CSOs, Government agencies supporting community forestry	Large	All states	Long-term
Support community forest management	<ul style="list-style-type: none"> <li>» Technical support from government staff and private sector/NGO technical staff for management planning, forest operations, etc.</li> <li>» Upon review and revision of rules and regulations, support technical realization of community vision for “<i>silvicultura comunitaria</i>”</li> </ul>	Community members linked to forest sector, Government agencies supporting community forestry, CSOs/NGOs, Private sector forestry specialists	Large	All states	Long-term

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>137</sup>	Location of investments	Timeframe of investments <sup>138</sup>
Revise community forestry rules and regulations	» Support SEMARNAT to revise community forestry rules and regulations to improve forest management, encourage “ <i>silvicultura comunitaria</i> ,” and enhance economic opportunities	SEMARNAT, CSOs, Communities, Private sector	Small	All states	Short-term

## STATUS OF LAND AND FOREST RIGHTS<sup>139</sup>

Key Element of Tenure Security <sup>140</sup>	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	Overall, the legal framework recognizes significant rights of communities. <i>Ejidotes</i> and <i>comunidades</i> have a relatively complete bundle of rights (alienation is partially restricted in <i>comunidades</i> ). The Mexican Constitution recognizes IP and local community tenure rights (Constitution, Art. 27VII). Women have constitutional recognition, and overarching inheritance laws protect women’s rights. Most indicators of women’s legal rights related to community-based tenure regimes are in place, making Mexico relatively strong in this sense, though there are opportunities to secure legal recognition of their leadership rights. <sup>141</sup>	
2. Implementation of legal recognition.	The PROCEDE program by GOM was largely successful at initial registration and titling of parcels for most communities. However, as transactions continue to take place, many go unrecorded because land registry offices are located in state capitals. As such, the registry is increasingly out of date <sup>142</sup> . By 2007, only 10% of <i>ejidos</i> had become fully privatized as a result of 1992 reforms (reform of Article 27). <sup>143</sup> Only 0.5% of the land area (900,000 ha) are estimated to be claimed by IP’s and LC’s but not recognized. <sup>144</sup>	Revise community forestry rules and regulations
3. Appropriate regulations for land and resource management	For communities to access commercial rights they must seek authorization from the Government, and projects may require thorough environmental review (depending on location/context). Forest management requirements and documentation may be burdensome for communities.	
4. Effective support from responsible government agencies	The government’s capacity to support communities at the local and state levels is limited. Federal institutions control most government resources. Despite this, national willingness to support forest and environmental initiatives has declined in recent administrations. Intersectoral and vertical and horizontal coordination/collaboration is limited. Results from early REDD+ projects indicate insufficient political will among government institutions for new governance structures.	Capacity building/technical trainings related to community forest enterprises; Support community forest management
5. Empowered and inclusive Indigenous and community governance	Governance appears to be relatively strong in communities. However, capacity remains very uneven with some local institutions poorly organized, lacking participation, and lacking enforcement capacity. Some areas have seen great success (i.e. Oaxaca in the 1980’s), which may have been partly a result of State/Federal government support and mentoring. Gender inclusion remains a widespread and persistent issue. Additionally, power in <i>Ejidotes</i> is becoming more concentrated as participation/voting rights (held by <i>ejidatarios</i> ) involve a fixed number of positions - as the population grows, more and more people in <i>ejidos</i> do not have rights to participate in decision-making over common land.	Capacity building/technical trainings related to community forest enterprises; Support community forest management



Key Element of Tenure Security <sup>140</sup>	Country Findings	Opportunities for policy/action/investment
6. Systems for recording community forest tenure rights	All community rights are recorded in a centralized registry (RAN) and include spatial data. However, public access and status of updating and resourcing are undetermined. It appears that there are many unrecorded land transfers (informal) due to the registry offices being located in State capitals, thereby calling into question the capacity of the registry to be updated.	
7. Enforcement of tenure rights	Many mechanisms for enforcement appear to be in place ( <i>de jure</i> ) but in practice capacity is extremely limited. In some cases, inspection-level of government authorities appear to ignore illicit activities related to deforestation. <sup>145</sup> Extralegal mechanisms of alienation have circumvented limitations of <i>de jure</i> alienation rights to forested lands and have been pursued by many <i>ejidos</i> . <sup>146</sup>	
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Mexico has ratified international conventions (i.e. ILO 169) pertaining to safeguards and IPs. However, legal frameworks and implementation are not sufficient, and their applicability depend on context. Community lands may be expropriated for public purposes without consent and communities are entitled to compensation. Mining concessions can be granted in IP LC lands without prior consultation (although IP's and LC's have preference for mining rights in cases of simultaneous application) – however, this situation may change with future amendments to the Mining Law based on ratified international treaties. <sup>147</sup>	
9. Conflict and dispute resolution	Many legal instruments and mechanism related to community conflicts have been developed. Most disputes within <i>ejidos</i> are resolved by the local governing body (General Assembly). Additionally, GOM mechanisms include an Agricultural Tribunal, Agrarian Attorneys General and the Program of Attention to Social Conflicts in the Rural Environment (COSOMER).	

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>148</sup>

Project Name	Financier	Implementer	Budget (millions,US\$)	Duration
Connecting Watershed Health w/ Sustainable Livestock & Agroforestry Production	WB	National Institute of Ecology & Climate Change, Fund for Conservation of Nature	13.6	1/2021-NA
Mexico REDD+ Emission Reductions Program	WB	CONAFOR	60	Pipeline
Strengthening Entrepreneurship in Productive Forest Landscapes	WB	CONAFOR	56	1/2018-3/2023
Sustainable Productive Landscapes	WB	SEMARNAT/NAFIN	39.8	3/2018-7/2023

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic Area / Jurisdiction		Description	Estimated Level of Impact on Tenure Reform Measures
Limited government willingness to support activities	National	Dramatic declines in funding for institutions that support community forestry stems from lack of prioritization by recent administrations; Government support for community-managed forests has declined relative to individual support.	Moderate
Limited government capacity to support activities	National	Ongoing technical mentoring is needed to support CFEs and capacity building at community-level – recent budget constraints severely limit govt. capacity.	Moderate
Drug trafficking and organized crime	National, concentrated in Guerrero, Chihuahua, Michoacán, Durango, Tamaulipas, <sup>149</sup> Jalisco	In addition to drug trafficking illegal logging occurs throughout Mexico. Persistent insecurity related to drug trafficking limits community access to forests and economic opportunities.	High
Weak community cohesion/organization	National	Weak community organization can impact on other social constraints such as capacity to exclude narco-traffickers and ability to facilitate small business development.	Moderate
Low forest quality and productivity may affect CFE/microenterprise viability	National	Communities with access to depleted forests or dry zone forests of limited commercial potential will have more challenges to realizing goals of social inclusion.	Low
Not all communities are on invested in expansion of social opportunities within CFEs	National	Some communities may lack the drive, will or capacity to expand participation of non-rights holders in the function of CFEs or community-based enterprises.	Low

## Country Profile

# NICARAGUA

### COMMUNITY FOREST TENURE IN NICARAGUA AT A GLANCE

Total area under communal designation (million ha) / % of national territory under communal designation	4.1 <sup>150</sup> / <b>31.4%</b>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Ministry of Agriculture and Forests (MAGFOR)</li> <li>» Ministry of Environment and Natural Resources (MARENA)</li> <li>» National Forestry Institute (INAFOR)</li> <li>» National Protected Areas System (SINAP)</li> <li>» National Demarcation and Titling Commission (CONADETI)</li> <li>» Nicaraguan Territorial Studies Institute (INETER)</li> <li>» Intendencia de la Propiedad – Procuraduría General de la República (PGR)</li> <li>» Supreme Court:</li> <li>» National Directorate of Registries (DNR)</li> <li>» Directorate for Alternative Dispute Resolution (DIRAC)</li> <li>» Regional governments</li> <li>» Indigenous and Afro-descendant Territorial Governments</li> </ul>
FCPF REDD+ Jurisdictions:	Autonomous Regions of the North (RACCN) and South (RACCS) Caribbean Coast, BOSAWAS Biosphere Reserve and Indio Maíz Biological Reserve (54% of national territory)
FCPF REDD+ Advancements:	ERPA not yet signed

## COMMUNITY TENURE CATEGORIES IN NICARAGUA<sup>151,152</sup>

<b>Communal Land/Property:</b> <sup>153</sup> Lands owned by Indigenous and ethnic communities, as defined by the Constitution and supporting laws. Rights acquired by historic presence or assigned by laws. Inalienable and imprescriptible and cannot be taxed or transferred.	<b>Access:</b> Yes <b>Withdrawal:</b> Yes, subsistence rights to forests do not require approval <b>Management:</b> Yes; in areas overlapping with protected areas joint management prevails <b>Exclusion:</b> Limited - communities cannot exercise exclusion against <i>terceros</i> who lawfully titled lands before Law 445 came into effect <b>Alienation:</b> No <b>Due process and Compensation:</b> Govt. can grant concessions to communal lands as long as it consults IP community; Community consent is not required in cases of acquisition by government. Nicaragua has ratified ILO 169 which states that IPs should receive compensation <b>Duration:</b> Unlimited - law does not specify durational limits
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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Nicaragua's forests in the Caribbean region are of global conservation and climate importance. Comprising 15 percent of Nicaragua's area (2 million hectares), the Bosawás Biosphere Reserve is the second largest rainforest in the western hemisphere, after the Amazon. The Emission Reduction Program accounting area (54 percent of the national territory) comprises this reserve, the Indio Maiz Biological Reserve and two extensive Autonomous Regions inhabited by Indigenous and Afro-descendant peoples (IP&A) and *tercero* settlers. Deforestation in the accounting area is driven by extensive livestock production and agriculture expanding into forest areas, which is caused by internal migration within Nicaragua from the Pacific and North-Central regions into the Caribbean region. High land prices, population increases, the high value of export crops and land scarcity drive these settlers to sell their land and move to the Caribbean region where land is relatively inexpensive and markets for livestock and agricultural products are strong. Within this context, the opportunity costs of maintaining forest cover appear high as forest products are relatively unprofitable compared to extensive agricultural activities and institutional governance and capacity to limit forest loss are weak. Despite these overall conditions, within the ER-Program accounting area, territories stewarded by Indigenous and Afro-descendant communities clearly demonstrate lower deforestation rates than private landholdings (see Table on next page),<sup>154</sup> although there are local cases where titling itself was insufficient to deter invasions.<sup>155</sup>

### BOX: SELECTED LEGAL ENACTMENTS SUPPORTING IP LAND AND FOREST RIGHTS IN NICARAGUA

**Constitution** (1987) – Articles 5, 89 and 107 recognize IP rights and communal lands and mandated that laws be instituted to implement rights.

**Law No. 28** (1987) – Established Caribbean regions as autonomous regions with their own regional institutions.

**Statute of Authority of the Regions of the Caribbean Coast of Nicaragua** (Law No. 28, 2003) – Recognizes rights of ethnic communities to transmit and hold communal lands. Established that communities can govern themselves and make NRM decisions and that lands are inalienable and imprescriptible.

**Communal Lands Law** (Law of the Regimen of Communal Property of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Caribbean Coast of Nicaragua and the Bocay, Coco, Indio, and Maiz Rivers – Law No. 445, 2003) – Recognizes rights of Indigenous and ethnic communities to historic territories and defines framework for demarcation, titling and internal governance.

**Decree No. 3584** (2003) – Expanded IP rights, including local public administration.

Nicaragua's land rights regime for Indigenous Peoples and Afro-descendants is a consequence of historical settlement, administration patterns, geography, and the past several decades of land reforms. The Caribbean coast,

## FOREST LOSS BY TENURE TYPE IN THE ER-P ACCOUNTING AREA

Tenure type:	Average annual deforestation rate (%) 2005-2015
IP&A territories within PAs	1.07
IP&A territories outside PAs	1.61
Private property within PAs	2.26
Private property outside PAs	3.26

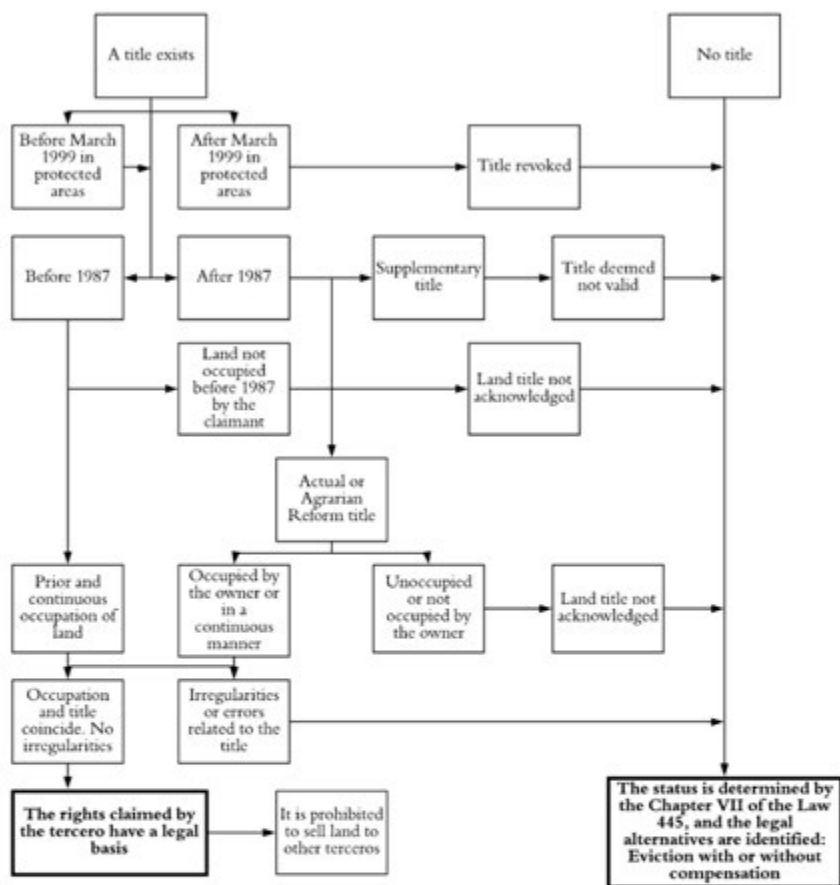
From Forest Carbon Partnership Facility – Carbon Fund. Caribbean Coast Emission Reduction Program Document (ER-PD). July 31, 2019. Accessed at: [www.forestcarbonpartnership.org/system/files/documents/ERPD\\_INGLES\\_310719\\_VF.pdf](http://www.forestcarbonpartnership.org/system/files/documents/ERPD_INGLES_310719_VF.pdf)

with extensive lowland tropical humid forests and home to the majority of Indigenous and Afro-descendant peoples, was never settled by the Spanish, and some Indigenous Peoples (IPs) (Miskitus) formed an alliance with the British in 1740, which secured their autonomy until they were forcibly annexed by the Nicaraguan State (settled by the Spanish) in 1894. A treaty in 1905 between Nicaragua and the United Kingdom recognized basic IP territorial rights. Through the early 1980s, the Nicaraguan Revolution contributed to widespread violence involving many IPs in the Caribbean region and forced communities to temporarily flee to Honduras to escape the conflict. The Sandinista government, through the adoption of an enactment in the National Constitution (1987), created the North and South Caribbean Coast Autonomous Regions (RACCN and RACCS, respectively), recognizing nearly half of the Nicaraguan national territory for the five regional ethnic populations of the Atlantic Coast (Miskutu, Mayangna, Rama, all IPs; and, Creole and Garifuna, Afro-descendants). This historic recognition of Indigenous and Afro-descendant rights came about despite strong animosity between IPs and the Sandinistas during the 1970s and 1980s. After the Sandinistas lost power in 1990, concessions were granted to mining and logging companies throughout the two autonomous regions. During the next decade, the Indigenous community of Awas Tingni fought to recover a foreign-held forest concession on their traditional lands, bringing the case to the Supreme Court where a ruling in their favor still did not enable the recovery of their lands. Finally, a favorable ruling for the community (and a loss for the Nicaraguan government) at

the Inter-American Court for Human Rights (CIDH) in 2001<sup>156</sup> led to the passage of the Communal Lands Law, or Law 445 (2003), that enabled implementation of a titling process for IP territories.

The lands collectively governed and managed by Indigenous and Afro-descendant People in Nicaragua are organized as territories. Law 445 created a process for titling Indigenous lands and led to the delineation and titling of 23 territories. Now, most Indigenous lands are titled, but implementation has halted at the final step<sup>157</sup> termed “saneamiento,” where *terceros*/settlers<sup>158</sup> without clear title are removed, unless they can reach an agreement with the territory. While there are varied interpretations of the law, *terceros* in possession of land with legitimate titles issued before 1987 may remain but are required to sell improvements to the community if they wish to leave. All those with illegitimate titles must vacate their lands and return them to the community – if they choose to remain, they must arrange a rental contract with the community.<sup>159</sup> Peaceful coexistence is a real possibility, and some Mayangna communities and the territories of Tasba Pri and Karata, where mestizo settlers have lived for decades, endorse this view. However, for many Indigenous and Afro-descendant leaders and communities, *saneamiento* means the complete removal of settlers from their territories. This stage is a fraught process, as the law places responsibility for evicting the settlers on the communities who rarely have the economic or political means to carry it out.<sup>160</sup> Additionally, as the Civil War in the 1980s ended, the government gave land to former soldiers, often in community territories that were considered abandoned after the Indigenous inhabitants were forced to flee during the war, resulting in many overlapping claims.<sup>161</sup> As the flood of *terceros* increases (to where *terceros* now outnumber Indigenous/ethnic inhabitants), conflicts have risen to the stage of violence on many occasions, resulting in scores of Indigenous, Afro-descendant, and *tercero* fatalities, and hundreds forced to leave their homes.<sup>162</sup> The Center for Justice and International Law (CEJIL) has warned that land invasions put some Miskito communities in the North at risk of extinction.<sup>163</sup> Meanwhile, there are demands from Indigenous and Afro-descendant leaders for the resolution of the issue from the government and implementation of the evictions under Law 445.

## FRAMEWORK FOR DETERMINING STATUS OF TERCERO RIGHTS WITHIN IP TERRITORIES



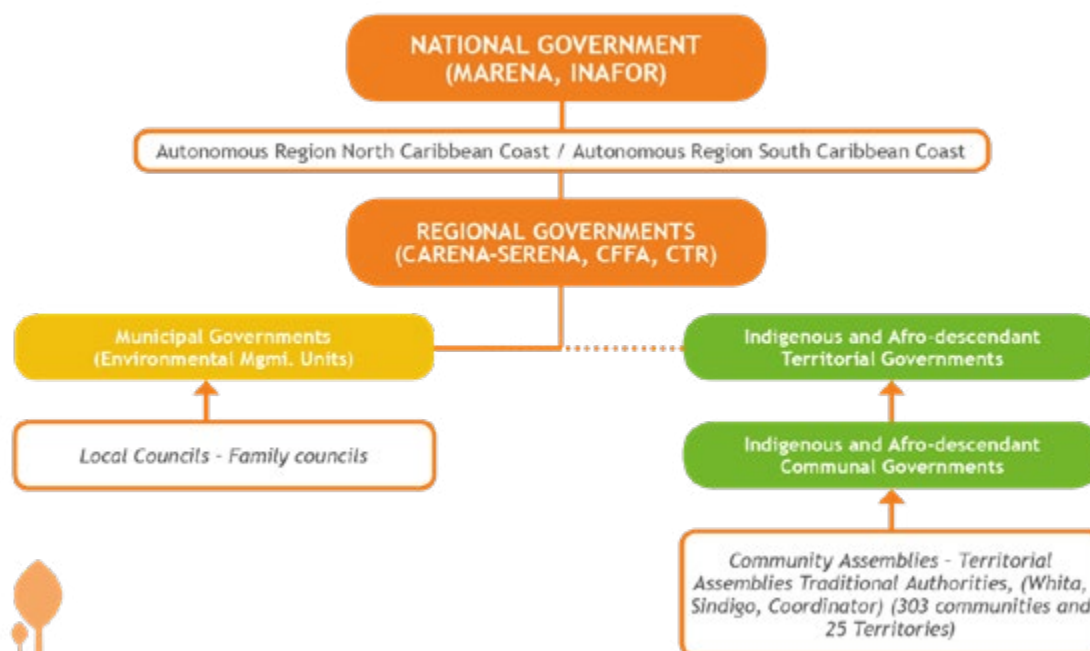
Source: Sylvander, N. 2018. Saneamiento Territorial in Nicaragua, and the Prospects for Resolving Indigenous-Mestizo Land Conflicts. *Journal of Latin American Geography*. Accessed at <https://par.nsf.gov/servlets/purl/10096484>

Governance of Indigenous territories integrates traditional authorities with state and territorial actors and institutions (see framework figure). Decentralization of power to local and regional authorities stemmed from demand for Indigenous political control over natural resources, after decades of central government concessions to private interests without sufficient input from Indigenous and Afro-descendant landowners. After an initial failure on the part of the Regional Councils of the Autonomous Regions of the North Caribbean Coast (RACCN) and the South Caribbean Coast (RACCS) to maintain broad public support,<sup>164</sup> the Councils were empowered by the resolution of the Awas Tingni court case and have played an increasing role in natural resource management. Control at the higher levels is exercised through the Natural Resource Secretary (SERENA) which evaluates and approves EIAs,

proposed concession agreements and forest management plans, through coordination of central government ministries (Ministry of Environment and Natural Resources, MARENA, and the Ministry of Agriculture and Forests, MAGFOR). Municipal governments coordinate at various levels with the regional governments and weigh in on natural resources decisions, conduct land use planning and administration of permits. Territorial government is responsible for decision making at that level (coordinating and assisting decisions of communal assemblies) while public administration governments are focused mostly on consultation. Powers delegated to community authorities and territorial authorities are somewhat unclear in practice and there are many contentious cases stemming from higher levels of government authorizing resource access over the concerns of communities.<sup>165</sup> An additional complicating issue is the overlap between local municipal governments and Indigenous territories. Protected areas which overlap with Indigenous territories are administered by the MARENA, but are joint-managed with the Indigenous community authorities, and protected area management plans must have approval by communal and territorial assemblies. The 23 Indigenous territories of

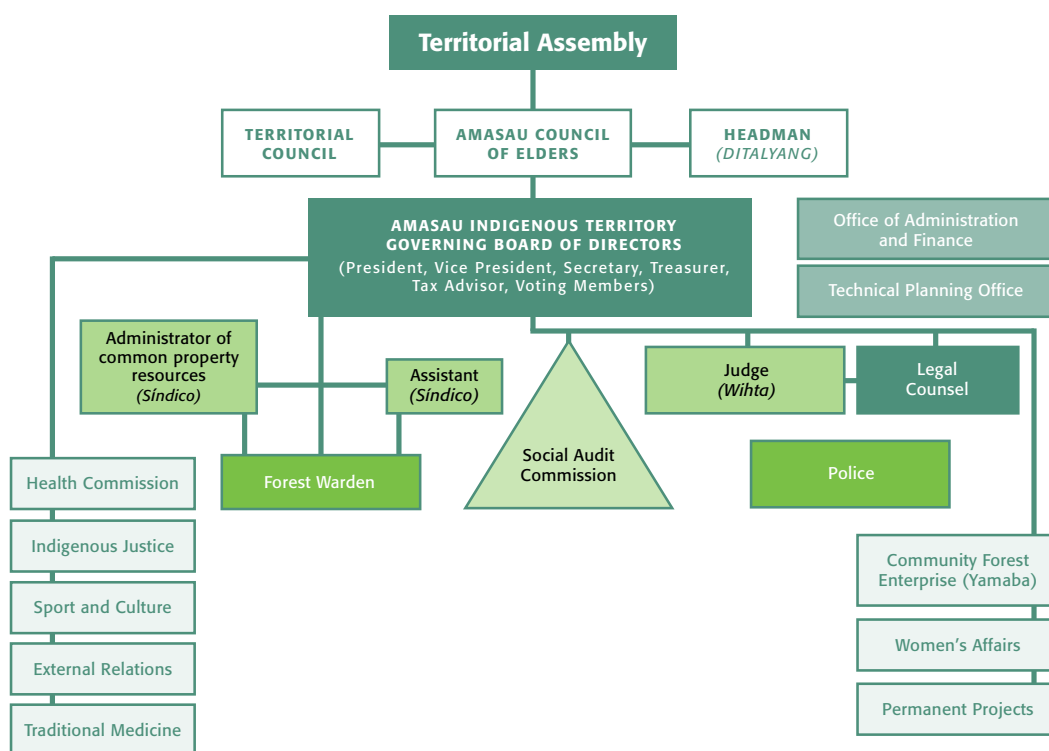
the Autonomous Regions of the Caribbean Coast include 304 communities with their own internal governance, comprised of communal and territorial governments (see levels of government figure). At the local levels, communities have differing traditional institutions responsible for forest management (see local governance structure figure) and the creation of CFEs and other local entities can complicate traditional governance.<sup>166</sup> In general, while women participate in forest-based activities (including harvest of forest products), they face significant obstacles to effective participation in forest decision-making within communities, including “weak community organization, pressure by spouses, difficulty organizing among themselves, and informal sanctions.”<sup>167</sup> Another pressing challenge around land and resource governance on Indigenous Peoples’ territories is related to the central government’s political role

## LEVELS OF GOVERNMENT IN THE CARIBBEAN REGION



Source: Forest Carbon Partnership Facility – Carbon Fund. Caribbean Coast Emission Reduction Program Document (ER-PD). July 31, 2019. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/ERPD\\_INGLES\\_310719\\_VF.pdf#page=63](https://www.forestcarbonpartnership.org/system/files/documents/ERPD_INGLES_310719_VF.pdf#page=63)

## AWAS TINGNI LOCAL GOVERNANCE STRUCTURE



Source: IDB. 2015. The Centrality of Social Capital: Forestry and Enterprise Development Among the Indigenous Mayangna of Awas Tingni(North Atlantic Autonomous Region, Nicaragua). Accessed at <https://www.rainforest-alliance.org/wp-content/uploads/2021/07/awas-tingni-1.pdf#page=12>



in the affairs of Indigenous Peoples' communities and territories. CSOs in Nicaragua have accused the government of creating parallel governance structures to Indigenous and Afro-descendant structures in order to undermine their autonomy and create favorable conditions for continued migration and extractive projects. These parallel structures include government bodies made up of FSLN officials and other loyalists and include the Regional Councils.<sup>168</sup> In a case related to the proposed interoceanic canal route (now cancelled) through IP territory, Sandinista leaders in the Bluefields community created a parallel Bluefields Creole Community Government in order to apply for a much smaller land claim than the original Bluefields community,<sup>169</sup> for which the title was approved in 2016, rejecting the original claim.<sup>170</sup>

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

The issues around IP&A lands and *saneamiento* are of a political and socio-economic nature and the contradictions in the political environment in Nicaragua pertaining to IP rights reflect a national willingness to support these communities via legal enactments when it is politically advantageous but ultimately leave implementation of the laws a lower priority. Indeed, the legal framework for IP&A rights is relatively strong by global standards – at the time of its establishment in 2003, Law No. 445 was highly progressive by global standards.<sup>171</sup> By and large, it is implementation of the laws that is lacking. When the Sandinista government under President Daniel Ortega returned to power in 2007, it allied with the Miskitu political party YATAMA and implementation of Law 445 was carried out, resulting in the titling of IP territories. However, current policies under Mr. Ortega are ambiguous at best, and implementation of Law 445 in its entirety (e.g., *saneamiento*) and resolution of the ongoing conflicts are not high priorities for the national government, despite repeated calls by international human rights bodies to step up protection of Indigenous communities<sup>172,173,174</sup> and end practices such as arbitrary detentions of dissenters.<sup>175</sup> While recognizing the government's role in Indigenous territorial conflict and issues, it is important to also recognize the constraints on its capacity stemming from the country's increasingly dire financial situation. The national economy has been

in recession since 2018 and growth will likely remain negative for the next several years, a situation compounded by the ongoing COVID-19 crisis and the profound decline of the tourism industry.<sup>176</sup> The devastating impacts of back-to-back Category 4 and 5 hurricanes profoundly affected the Indigenous territories of the Caribbean Coast.<sup>177,178</sup> These economic constraints, accompanied by reduced lending by multilateral donors (i.e., World Bank, Inter-American Development Bank) has reduced Nicaragua's institutional capacity and taken focus away from resolving long standing issues related to Indigenous Peoples' and Afro-descendants' land and forest rights.

Seen from a *de jure* perspective, land, forest and carbon rights (tied to forest rights) relevant to the ER-Program in the Caribbean region are determinable by referring to registered titles – in this sense there is clarity over who owns the land and resources. However, in terms of *de facto* tenure security, the accounting area is very much a contested landscape. The failure to fully implement Law 445 does indeed represent a failure of government implementation (with the abovementioned causes), though government is not solely responsible for the social conflicts in Indigenous territories. Until the underlying drivers of the agricultural frontier and mass internal migration abate, even *saneamiento* will be insufficient to completely halt colonization, and efforts at IP&A territorial integrity and tenure security will be challenged. Furthermore, ER-P activities to promote forest conservation and sustainable development will lack a stable operating environment and will face steep challenges. Urbanization in Nicaragua is increasing steadily.<sup>179,180</sup> If this reflects a diversion of settlers from the agricultural frontier to larger settlements and cities, it may decrease pressure on IP&A lands and forests. Indeed, a powerful way of addressing the expansion of the agricultural frontier is to draw settlers into more developed areas (larger settlements and cities) with services and opportunities (i.e., schools, jobs). However, as noted above, the growing financial limitations of the State may act as a constraint on the needed investments to expand prosperity anywhere in the country in the short-term, urban or rural.

Several additional constraints related to the overall political climate are likely to limit potential for progress. Freedom House's most recent report on Nicaragua (2020)

raises strong concerns about limits by government on political rights and civil liberties.<sup>181</sup> The report notes the consolidation of all branches of government under the ruling party's control, the limitation of fundamental freedoms, and unchecked corruption in government. Currently, Nicaragua is one of the 20 most corrupt countries in the world, as noted by Transparency International, , and narco-trafficking remains a persistent issue throughout the region.<sup>182</sup> The forest sector itself appears to be of relatively low priority as measured by government budgetary allocations and low institutional presence in forested regions of the Caribbean. Persistent reports of political interference and government inaction in the face of illegal land grabs and illicit mining, as well as in the granting of mining and timber concessions in Indigenous territories, raise additional concerns about the government's willingness and capacity to engage IP&A communities.<sup>183</sup>

Opportunities to strengthen Indigenous and Afro-descendant tenure security in Nicaragua depends upon the national government's willingness to engage with and seek peaceful resolution of the conflicts around *terceros* in Indigenous territories. However, due to a lack of political will and the government's financial issues, these are more medium- to long-term solutions. Ideally, any future efforts would involve addressing both the pull and push factors that continue to drive the advance of the agricultural frontier into Indigenous territories. Territorial government mechanisms for co-habitation (i.e., peaceful co-existence of *terceros* and Indigenous Peoples and Afro-descendants) can be harmonized with the national and regional legal frameworks, and capacity building can be supported at the territorial and local levels to administer these mechanisms. This, in time, could reduce conflict and lessen the urgency of *saneamiento*.

Due to the untenability of Indigenous tenure, the government must act to implement its legal obligations regarding tenure security and the proposed mechanisms for decreasing conflict. Aside from this emphasis, there may be some scope for cautious optimism for private sector investment in the forest, tourism, and/or agricultural sectors. Following a precipitous drop in FDI in 2018, UNCTAD's 2020 World Investment Report shows that FDI flows to Nicaragua amounted to US\$515 million in 2019, a significant increase from US\$359 million in 2018.<sup>184</sup> Because of the im-

portance of foreign investment in Nicaragua—especially as ODA sources have dried up recent years—the government has passed a number of laws in recent years to attract and protect foreigners investing in the country. Among them are the Tourism Industry Incentives Law, and the Foreign Investment Promotion Law. While the business environment is fraught with uncertainty and risk,<sup>185</sup> including reputational risk, nonetheless working with private sector, rather than government, may offer opportunities for resolution of conflicts around land, as well as economic opportunities for Indigenous and Afro-descendant communities. For example:

- » In the forest sector in 2019, two European financiers (FMO and Finnfund), invested US\$20 million with a Nicaraguan company – MLR Forestal – to expand its teak and cocoa plantations, which hold Forest Stewardship Council (FSC) and UTZ certifications for their teak and cacao products, respectively. MLR Forestal is operating in historically Indigenous and Afro-descendant lands.<sup>186</sup>
- » Private interests in the Atlantic region have strong reasons to support stabilizing the tenure situation. Established, export-oriented cattle ranchers and oil palm plantations face significant business and reputational risks from the ongoing situation and conflicts.
- » Expert interviews have also noted possibilities for tourism, given their views that a younger generation of national, socially responsible investors exist in the tourism sector, who already have strong and historic interests in the Atlantic region in that sector.

Collective action, at the community level and various levels of government in the Atlantic region is strong, despite the issues related to parallel governance structures. Indigenous and Afro-descendant communities have coexisted with *terceros* for decades and many have numerous family connections to settlers. Therefore, most parties in the region have an interest in incorporating existing settlers under some form of long-term arrangement (i.e., rental) in order to curtail violence and stabilize communities. Aside from the efforts involving government participation and willingness (contingent, in part, on expanded financial capacity), the most profound opportunities for the strengthening of rights are to support capacity building in Indigenous and Afro-descendant communities and to

invest in conflict resolution. The former would include building technical capacity in governance, conflict management, and natural resources management, in order to facilitate economic development. Case studies have found that, beyond titling, a community's political and economic capacities are instrumental in defending its land against continued invasions.<sup>187</sup> Conflicts over land in historically Indigenous territories could be reduced by strengthening alternative conflict resolution mechanisms that rely on customary governance and, when needed, formal judicial capacity. A potential institutional actor that has a key role in the World Bank's Property Rights Strengthening Project is the government's Directorate of Alternative Dispute Resolution (DIRAC).<sup>188</sup> DIRAC already has a record of working toward positive results in the cadastral surveying

of Indigenous community lands. Some of these activities (i.e., support for informal conflict resolution mechanisms) can be supported and implemented on an *ad hoc* basis even without significant support for the central government, recognizing that their impacts are somewhat limited without more extensive investments and institutional development. Expert interviews also indicated a possibility of directly supporting regional governments in conflict resolution. The context of violence and escalating tensions necessitates independent, trusted local leadership to advance many (or all) investments/actions. Given the near absence of CSO/NGO capacity in the Atlantic region, it may fall on institutions such as local universities to provide leadership in facilitating and organizing any reforms or programs, including conflict resolution.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>189</sup>	Location of investments	Timeframe of investments <sup>190</sup>
Conflict resolution on IP territories	» Support alternative conflict management and resolution mechanisms and formal dispute resolution bodies, such as the Directorate of Alternative Dispute Resolution (DIRAC)	Policymakers, government officials/judiciary (i.e., DIRAC), CSOs/NGOs, IP communities	Large	IP territories	Long-term
Support IP capacity	» Financial and technical support to IP communities to build capacity in governance and natural resources management » Develop internal capacity for participatory surveys for land use planning and natural resource management	CSOs/NGOs, Government officials, IP communities	Large	IP territories	Long-term
Explore potential for collaboration with private sector investors	» Expansion of existing private sector investment activities through incentives based on access to markets with high social & environmental standards, including deforestation free supply chains, with conflict management & resolution, & FPIC approaches as entry point	IP communities, neutral honest broker, private sector (national, FDI)	Small to Medium	IP territories	Short to Long-term
Strengthen and administer mechanisms of third-party co-habitation on territories	» Support development of territorial government mechanisms (in accordance with Law 445) that establish co-habitation for use of land by <i>terceros</i> , including land rental contracts; zoning and norms must be harmonized with legal approaches at higher levels of governances (i.e., regional-central govt., autonomous regions) » Support territories and communities to strengthen their capacities to administer co-habitation mechanisms	Territorial governments, National-regional government policymakers, CSOs/NGOs, Communities	Moderate	IP territories	Long-term

## STATUS OF LAND AND FOREST RIGHTS<sup>191</sup>

Key Element of Tenure Security <sup>192</sup>	Country Findings	Opportunities for policy/ action/investment
1. Legal frameworks for tenure rights	Legal framework is strong and progressive for IP/ethnic community property rights, recognizing significant rights and authority related to communal rights in the Caribbean region (including constitutional recognition of IP communal tenure over lands). Central and Northern Pacific regions do not have legal procedures to allow IP community rights recognition. Legal framework does not require clarifying competing legal claims before titling and does not provide adequate mechanisms for title holders to remove illegal occupants. Women are guaranteed equal rights but there is a lack of measures to ensure meaningful participation.	Strengthen and administer mechanisms of third-party co-habitation on territories
2. Implementation of legal recognition.	On paper, 98.13% of the ER area (which is ~59% of the national territory) is clearly titled, including 23 Indigenous territories comprising 53% of the ER area. However, significant conflict has arisen as a result of informal/illegal settlements on titled Indigenous territories.	Strengthen and administer mechanisms of third-party co-habitation on territories
3. Appropriate regulations for land and resource management	Permits from INAFOR for legal forest management are time consuming and bureaucratic. As a result, significant timber is harvested illegally and CFEs are stifled by unfair competition.	
4. Effective support from responsible government agencies	Government coordination and consultation between agencies/departments is insufficient. There is little supervision of forestry plans and permits due to underfunding and understaffing in the relevant agencies. <sup>193</sup>	Conflict resolution on IP territories; Support IP capacity
5. Empowered and inclusive Indigenous and community governance	Community governance systems are in place in IP territories; social inclusion is, in general, weak in terms of decision making in communal forests, with women largely excluded <sup>194</sup> . Capacity for forest management planning and operations appear limited in most cases. Mid and local-level IP governance institutions and CFEs lack a unified vision for CF and operational decision-making <sup>195</sup> . Outside support from NGOs has supported some communities' CFE and local community leadership development - though limitations exist (funding, staff turnover, discontinuity of support). National/subnational advocacy and support groups suffer from forms of repression and inadequate resources.	Support IP capacity; Explore potential for collaboration with private sector investors; Strengthen and administer mechanisms of third-party co-habitation on territories
6. Systems for recording community forest tenure rights	The Public Registry maintains land registration records and has offices in the Autonomous areas with Indigenous Peoples' territories. As of July 2020, it appears that the Public Registry and INETER have some documents/services available online, though online access likely presents challenges to many IPs.	Support IP capacity
7. Enforcement of tenure rights	Weak property control puts IP and community lands at risk from migrants from the central part of the country. Evicting third parties from IP lands has not been completed/enforced by government. Violent conflicts have been increasing for years, and media and NGO reports document persistent human rights abuses and encroachment related to IP/migrant conflict in IP territories.	Strengthen and administer mechanisms of third-party co-habitation on territories; Conflict resolution on IP territories
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Nicaragua has adopted major international conventions related to safeguards for IP's and LC's. Additionally, national laws affirm autonomy and rights of IP's and LC's (including FPIC) and include REDD+ safeguards. However, the country's track record is poor with regards to implementation. Mining and logging concessions compete with IP and LC priorities and pose a threat to IP rights. More progress is needed in terms of social responsibility from private sector.	

Key Element of Tenure Security <sup>192</sup>	Country Findings	Opportunities for policy/action/investment
9. Conflict and dispute resolution	As of 2011, “approximately 35% to 40% of all land in Nicaragua is subject to competing claims, primarily arising from two conflicting ownership claims, a result of land reforms and inadequate documentation. In the Atlantic region, most disputes on based on assertions of Indigenous land rights.” <sup>196</sup> Nicaragua has the Directorate for Alternative Dispute Resolution (DIRAC) within the Supreme Court, with positive results related to cadastral surveying of IP community lands. Freedom House reports that “individuals with connections to the FSLN sometimes enjoy an advantage during property disputes.” <sup>197</sup>	Conflict resolution on IP territories

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>198</sup>

Project Name	Financier	Implementer	Budget (millions, US\$)	Duration
Caribbean Coast Emission Reduction Program	WB	Ministry of Environment and Natural Resources	50	Pipeline
Nicaragua Property Rights Strengthening	WB	Attorney General’s Office	50	3/2018-3/2024

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction			Description	Estimated level of impact on tenure reform measures	Potential for in-project/program mitigation
Conflicts over land in the Atlantic Region escalate	National		Conflict between <i>terceros</i> and IP continue to escalate, provoking more violence and requiring ever greater political will to resolve	High	Low
Insufficient political will	National		National political will is insufficient to resolve and increasingly no aligned with IP interests; insufficient will to address root causes of internal migration and encroachment in IP territories	High	Low
Persistent lack of community capacity	IP territories		Communities lack the political and economic capacity to defend their land and interests from outsiders	High	Moderate
Lack of national government financial resources to advance rights	National		Compounding crises (COVID-19, sanctions and economic recession, hurricane devastation) have limited national government’s capacity to implement programs or services	High	Low
Hurricanes (2020) and COVID-19 have created urgent crisis in Caribbean region	National		Near-term focus is on immediate humanitarian concerns; long-term drivers of conflict are temporarily overlooked	High	Low
Potential to work with private sector & finance as alternative & incentive to resolve conflicts	IP territories		Concerns over civil rights, corruption, weak rule of law and arbitrary regulation, among others, create adverse climate for private investment, fraught with reputational risk that would be barrier to entry for socially and environmentally responsible investors and for access to such markets.	High	Moderate

# Country Profile

## PERU

### COMMUNITY FOREST TENURE IN PERU AT A GLANCE

Total area under communal ownership/ designation (million ha) / % of national territory under communal ownership/ designation	44.56/35% <sup>199</sup>
Forest area under communal designation (million ha) / % of forests under communal ownership/ designation	17.8/25% <sup>200</sup>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Ministry of Agriculture and Irrigation (MINAGRI)</li> <li>» Ministry of the Environment (MINAM)</li> <li>» Ministry of Energy and Mines (MINEM)</li> <li>» Ministry of Culture (MINCUL)</li> <li>» National Superintendency of Public Registries (SUNARP)</li> <li>» Land Registry</li> <li>» Office for Land Formalization of Agrarian Properties and Rural Cadaster (DIGESPACR)</li> <li>» National Natural Protected Areas Service (SERNANP)</li> </ul>
FCPF REDD+ Jurisdictions:	Regions of San Martin and Ucayali in the Peruvian Amazon (12.6% of national territory)
FCPF REDD+ Advancements:	ERPA not yet signed

### COMMUNITY TENURE CATEGORIES IN PERU<sup>201</sup>

<b>Native Community Forest Lands Suitable for Forestry (<i>Tierras de Comunidades Nativas con Aptitud Forestal</i>):</b> Legally recognized native communities that are autonomously organized, communal; land is imprescriptible (except for abandonment).	<b>RRI Tenure Type:<sup>202</sup> Owned</b> <b>Access:</b> Yes <b>Withdrawal:</b> Yes, subsistence use is unrestricted, commercial use requires license and extraction fee <b>Management:</b> Yes, according to customs and traditions <b>Exclusion:</b> Yes, Native Communities have priority to explore natural resources and exclusive use of forest lands <b>Alienation:</b> Limited, forests are inalienable except for use as collateral warranties <b>Due process and Compensation:</b> Due process is required, but law is silent on compensation <b>Duration:</b> Unlimited
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**Communal Reserves in Forest Land (*Reservas Comunales en Suelo Forestal*):** Peasant/native communities belonging to IP and LC populations, which are organized & meet criteria of being neighbors & traditional use of natural resources.

**RRI Tenure Type: Designated**

**Access:** Yes

**Withdrawal:** Yes, commercialization is subject to approved Management Plan

**Management:** Yes, according to approved Management Plan

**Communal Reserves in Forest Land (*Reservas Comunales en Suelo Forestal*):** Peasant/native communities belonging to IP and LC populations, which are organized & meet criteria of being neighbors & traditional use of natural resources.

**Exclusion:** No, State shares rights to exclusion

**Alienation:** No

**Due process and Compensation:** Due process is required, but law is silent on compensation

**Duration:** Unlimited

**Peasant Community Forestlands Suitable for Forestry (*Tierras de Comunidades Campesinas con Aptitud Forestal*):** Legally recognized peasant communities that are autonomously organized, communal; land is imprescriptible (except for abandonment).

**RRI Tenure Type: Owned**

**Access:** Yes

**Withdrawal:** Yes, subsistence use is unrestricted, commercial use requires license and extraction fee

**Management:** Yes, with approved Management Plan

**Exclusion:** Yes, Native Communities have priority to explore natural resources and exclusive use of forest lands

**Alienation:** Limited, can form enterprise with third party to exploit natural resources and use as collateral warranties

**Due process and Compensation:** Due process is required, but law is silent on compensation

**Duration:** Unlimited

**Indigenous Reserves (*Reservas Indigenas*):** An Indigenous People in a situation of isolation or initial contact.

**RRI Tenure Type: Designated**

**Access:** Yes

**Withdrawal:** Yes, subsistence activities

**Management:** Yes

**Exclusion:** Yes

**Alienation:** No

**Due process and Compensation:** Due process is required, but law is silent on compensation

**Duration:** Limited - rights exist as long as IPs maintain their situation of isolation or initial contact

## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Deforestation is a growing issue in Peru and measures to address forest loss and degradation play a significant role in the country's strategy to reduce greenhouse gas emissions. Between 2008 and 2017,

deforestation in the Amazon (95 percent of Peru's forests) increased by 56 percent as compared to the 2000-2007 rate. Most deforestation (40 percent from the 2008-2017 period) occurred on lands without clear rights/ownership, includ-

ing unassigned lands and permanent production forests not under concession. Most deforestation in the country is associated with small-medium-scale agriculture, mining, logging (illegal logging contributing ~40 percent of domestic production).<sup>203</sup> At times, illegal logging is conducted by outsiders on Indigenous Peoples' territories while communities are forced to pay the resulting fines.

The number of Indigenous communities in the Amazon is estimated at over 2,500, with an additional 7,000 peasant communities throughout Peru.<sup>204</sup> Rights and Resources Initiative estimates that 21 percent of land within the country



(26.9 million hectares) is not legally recognized, but claimed, by Indigenous Peoples and local communities.<sup>205</sup> The legal framework supporting IP rights in Peru began with Constitutional reforms in 1920 that recognized Indigenous legal existence, but only applied rights such as imprescriptibility and inalienability to IP lands outside of the Amazon. As a result, over the next 50 years, people continued to colonize the Amazon from the Andes due to political and economic instability, and the growing threat to their lands led to the formation of IP federations in the 1970s. A progressive legal enactment of the period created a pathway for further IP rights: The Law of Native Communities and Promotion of Agriculture in the Lower and Upper Rainforests (1974). This law granted property rights to Amazonian Indigenous communities, rights to natural resources and provided for registration as “Native Communities.” However, by the next year the Forest and Wildlife Law (1975) curtailed those rights by stating that all forest resources are property of the State (reinforced by the Constitution of 1979) and therefore must be managed according to national regulations. Additionally, the Law of Native Communities and Agrarian Development in the Lower and Upper Rainforests (1978) allowed that native communities seeking titles would instead have usufruct contracts over forests. The enactment of a Forest and Wildlife Law in 2000 introduced a regulatory system based on permits and concessions, and, in practice, these contracts and the modern regulatory environment have meant that IP communities seeking to commercially utilize forest resources must undertake a slow, burdensome process which is only available to properly registered communities.<sup>206</sup>

Over the past several administrations, there has been variable interest in advancing community titling efforts, with some administrations (i.e., Fujimori) promoting the fragmentation of community lands and diminishment of rights, while others have acted to strengthen rights. In recent years, laws that enable private investment and development of forests passed without support from Indigenous Peoples. In response, protests stemming from these enactments turned violent and an extended consultation process emerged, leading to a new Forest and Wildlife Law (2011) that re-establishes IP and peasants’ exclusive rights to forests within their territories. That same year, the Law of Right to Prior Consultation of Indigenous People recognized IP consultation, though this law specifically excludes peasant communities.

Challenges to expanding IP and LC tenure security are varied and highly contextual. The major enabling conditions for tenure security advancement that are currently insufficient are related to inter-institutional coordination, *ad hoc* implementation processes and procedures, institutional capacity, land and resource conflicts, and the complexity of the underlying context and need for the articulation of targeted, conflict sensitive policies, administrative procedures, investments, and actions for the formalization of collective land rights.

In the past, titling was a centralized responsibility of the Ministry of Agriculture (MINAGRI). Decentralization laws in 2002 shifted land administration responsibilities to the regional governments, which had little or no expertise and very limited technical capacity and resources to carry out these new demands.<sup>207</sup> During the resulting gap in services over several years, donor and NGO initiatives and projects, especially those working in the environmental sector, but also rural development and land sectors, addressed themselves to the regional governments directly and targeted “low hanging fruit” (e.g., simplest titling opportunities), leaving for later projects the more complex cases. Today the regional governments still lack adequate capacity, as technical staffing is insufficient and turnover is high. The multiplicity of donor and NGO initiatives, coupled with the lack of central government attention to their policy, coordination, normative, and oversight responsibilities, has encouraged a somewhat chaotic approach and a situation of highly uneven capacity.

In some cases, the regulatory framework presents unnecessary challenges. For example, the Law of Native Communities and Agrarian Development in the Lower and Upper Rainforests (1978) stipulates that soil surveys must be carried out before titling in order to classify the land’s potential for different uses (i.e., agriculture, forestry, conservation). Areas suitable for agriculture can be titled, and those for forestry can be accessed via usufruct contracts. These surveys present an expensive and time-consuming obstacle to securing rights for communities. Titling, in general, is a long and expensive process and the State has been reluctant to provide adequate funding for community titling. In addition, the lack of inter-sectoral coordination has been a major contributor to conflicts and disputes over IP and LC lands, as the natural resources sectors

tend to operate independently (i.e., mining and hydrocarbon concessions may be allocated without recognizing existing claims and land uses). In many cases, communities are unable to complete titling due to these conflicts, as forest, mining, and hydrocarbon concessions, protected areas and community lands may overlap. Resolving conflicts may require proof of community occupation before the other rights were assigned, and in cases where other interests are already registered in a public register, a judicial intervention may be necessary. The burden on already strained government institutions has been increased by more and more communities seeking to assert rights. The importance of doing so in a systematic and timely fashion is underscored by the scale of ongoing colonization and expansion of the agricultural frontier in areas of high conservation value forests; this stemming from contemporary urban-rural or rural-rural migration, and in some cases well-organized attempts at land trafficking by corrupt business interests and officials.<sup>208</sup>

Several donor-led projects are underway to advance and strengthen community rights and leverage those rights for benefits, including the Inter-American Development Bank's Rural Land Titling and Registration program (Phase III). This project focuses efforts on the Peruvian Amazon and builds off the experiences of previous iterations that supported titling in the coastal and Andes regions. World Bank's Forest Investment Program is working on the ground to implement forest monitoring, support business processes and link smaller projects in rural areas to value chains. The FCPF Emissions Reduction Program in Peru plans to advance titling for Indigenous communities, including resolution of tenure issues, demarcation/titling, conduct a study to determine priorities for implementation, and support for land management and community forest enterprise (CFE) development.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE:

Presently, political will is sufficient at the national level to advance tenure security for Indigenous Peoples and local communities. Resistance to Indigenous rights is not an obstacle to further advancement, outside of hotspots

where mining and hydrocarbon interests dominate. Civil society's capacity is very high in Peru, with the benefit of significant operational experience gained from the history of projects in the land and natural resource sectors. The country's policies, legal enactments and many other enabling conditions indicate that, given the appropriate investments, significant progress can be made to expand titling and improve security and benefits for communities with titles.

Opportunities to support the advancement of collective Indigenous and community rights include: addressing technical capacity and resource constraints in the relevant institutions (especially regional governments charged with producing titles, institutions collecting and documenting land and natural resource sector information, and public officials conducting community consultations and facilitating dispute resolution); putting in place needed inter-sectoral/inter-agency coordination mechanisms in order to systematically harmonize, streamline, and articulate administrative procedures and processes for collective land titling (aligning not only government institutions, but also the numerous initiatives led by non-government actors); and, resolving other bottlenecks in the titling process posed by "unfit-for-purpose" requirements and regulations, local capacity for oversight and quality control over completion of administrative processes and procedures, and effective conflict resolution mechanisms, among others. Turnover in government institutions is high, and technical capacity needs for highly trained engineers and others with advanced degrees cannot be met. Creative solutions are required for meeting this need, such as alternative training networks and capacity building supported by technical schools, colleges and other educational institutions that can offer targeted skills courses for public officials. Improving access (outside of public officials), transparency and sharing of land information, procedures and processes via the land administration IT system would further facilitate learning and dissemination of best practices. Capacity must be strengthened for all actors carrying out consultations with communities.

Efforts to improve tenure security and support leveraging rights for communities can be extended to those already with title but not presently realizing the full benefits of their legal recognition. This can include working to im-

prove benefit sharing across natural resource sectors (i.e., mining and hydrocarbons), maintaining documentation critical for tenure security and community governance, financial planning for communities and support for forest

management planning, locally relevant technical capacity, forest operations, CFE capacity building and other activities that allow communities to benefit from the sustainable management of forest resources.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>209</sup>	Location of investments	Timeframe of investments <sup>210</sup>
Strengthen institutional capacity	<ul style="list-style-type: none"> <li>» Focus long-term capacity building on institutions that play key roles in demarcation of lands, registration of rights and clarification/simplification of procedures</li> <li>» Focus on bottlenecks in existing technical capacity/business processes</li> <li>» Create training programs to increase technical capacity of public officials (via technical institutions, colleges, etc.)</li> <li>» Financial and technical support to institutions to support community natural resource and land documentation requirements</li> <li>» Support development of national level observatory to monitor regional government compliance with commitments under law and policy to advance titling</li> </ul>	Municipal/regional governments, CSOs, IP federations/organizations	Large	National	Long-term
Improve NR/land sectoral coordination	<ul style="list-style-type: none"> <li>» Land and natural resources sectors (especially forests, mining, hydrocarbons) must improve coordination via development of national policy on community titling/NR management and inter-sectoral/inter-agency coordination mechanisms in order to extend titling to more communities and prevent conflicts</li> <li>» Strengthen inter-institutional coordination for enforcement of land use restrictions and obligations</li> </ul>	Policymakers, Central government	Medium	National	Medium-term
Scale-up successful models for IP land demarcation and titling	<ul style="list-style-type: none"> <li>» Identify key contextual conditions of successful programs (e.g., Loreto program for titling of IP territories); scale-up and expand successful models</li> </ul>	Municipal/regional governments, donors	Large	Subnational	Medium-term
Clarify legal personality of communities' seeking land rights	<ul style="list-style-type: none"> <li>» Clarify legal definition of community and set "control-point" to minimize land grabbing/creation of new communities for purposes of land acquisition</li> <li>» Support formalization processes through tenure studies to establish baselines of community &amp; individual claims, both with &amp; without title</li> </ul>	Policymakers, Regional governments	Moderate	National	Short-term

Opportunity	Specific investments/actions	Key stakeholders	Scale of investments <sup>209</sup>	Location of investments	Timeframe of investments <sup>210</sup>
Support communities with clarified tenure	<ul style="list-style-type: none"> <li>» Improve benefit sharing for communities, especially related to mining and hydrocarbon sectors</li> <li>» Support maintenance and updating of land and natural resource sector documentation for communities and legal requirements for community governance (i.e., election of representatives, record keeping of decisions, etc.)</li> <li>» Financial and technical support for land use planning at community level</li> <li>» Support internal governance, forest management planning, operationalization, CFE capacity building and other activities that allow communities to benefit from sustainable management of resources</li> </ul>	IP and peasant communities, Private sector natural resource interests, Municipal/regional governments, CFEs	Large	National	Long-term
Strengthen land information databases	<ul style="list-style-type: none"> <li>» Strengthen transparency and interoperability between disparate official land information databases encompassing concessions, land rights and land use restrictions</li> </ul>	Government agencies -Land Registry, SUNARP, MINAGRI (incl. the Forest Authority), Regional Governments, DSPICAR, Forest Inspection Agency -OSINFOR, MINAM (incl. SERNANP), MINEM (incl. Geological Mining and Metallurgical Institute of Peru – INGEMMET)	Moderate	National	Medium-term
Build capacity for public/community consultations	<ul style="list-style-type: none"> <li>» Financial and technical support to train public officials (see above opportunity), NGOs/CSOs and local community leaders/representatives on consultation protocols</li> <li>» Disseminate good practices for consultation processes</li> </ul>	Government public officials, NGOs/CSOs, Community leaders/representatives	Large	National	Long-term
Strengthen conflict resolution	<ul style="list-style-type: none"> <li>» Improve capabilities of public officials and local facilitators via trainings and resources</li> <li>» Strengthen institutional coordination (see above opportunity) to minimize conflicts</li> </ul>	Ombudsman of Peru, Government Natural Resource Ministries, General Assemblies, Local facilitators	Moderate	National	Medium-term

## STATUS OF LAND AND FOREST RIGHTS<sup>211</sup>

Key Element of Tenure Security <sup>212</sup>	Country Findings	Opportunities for policy/ action/investment
1. Legal frameworks for tenure rights	The legal framework offers adequate opportunities for titling of communal lands. The Constitution recognizes that “rural and native communities have legal existence and are corporate entities. They are autonomous in their organization, community work, and the use and free disposal of their lands, as well as in the economic and administrative aspects within the framework provided by law. The ownership of their lands may not prescribe, except in the case of abandonment described in the preceding article. The State respects the cultural identity of the rural and native communities” (Constitution, Art. 89). Community land rights receive the same level of protection as any other type of property but must be registered to receive protection. Forests resources belong to the nation and the bundle of rights is more limited for forested lands. Women’s rights have constitutional recognition, and overarching inheritance laws support women’s rights, however, community-based tenure regime gender-sensitive legal protections for IP and LC women’s forest rights are especially sparse. <sup>213</sup>	Clarify legal personality of communities’ seeking land rights
2. Implementation of legal recognition.	While progress has been made in titling IP community land, many communities still lack formal titles. While the formal titling procedure is free for communities the process is lengthy and involves significant costs from technical teams, involvement with >12 offices, and many years to complete the process. Lack of a national framework for coordination between government institutions limits effectiveness of titling process.	Strengthen institutional capacity; Scale-up successful models for IP land demarcation and titling; Clarify legal personality of communities’ seeking land rights
3. Appropriate regulations for land and resource management	Some permits require a land title (which may only be obtained with documented use). Communities must apply for permits to use forest resources for commercial purposes and follow forest regulations (vs customary rules).	
4. Effective support from responsible government agencies	IP issues are low on the national agenda. Existing policies are inconsistent with local realities. Significant corruption in land sector with widespread illegality in land trafficking, sales and occupation, encouraged by lack of coordination between government offices.	Strengthen institutional capacity; Support communities with clarified tenure; Improve NR/land sectoral coordination; Build capacity for public/community consultations
5. Empowered and inclusive Indigenous and community governance	Traditional practices often discriminate against women and afford them little say in community decision making. Relatively strong civil-society, NGOs and active Indigenous federations. Legally recognized IP organizations struggle to maintain legally required documents.	Strengthen institutional capacity; Support communities with clarified tenure
6. Systems for recording community forest tenure rights	SICNA (by the NGO IBC) provides geo-referenced database of Indigenous communities in Amazon, in order to address lack of official cadaster and information. In a parallel effort, as of late 2019 SICCAM (by IBC) had mapped 70% of peasant communities. <sup>214</sup> Both maps surpass official sources.	Strengthen land information databases
7. Enforcement of tenure rights	The prevalence of illegal logging and mining in forest areas indicates that enforcement of tenure rights in inadequate.	Improve NR/land sectoral coordination
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Peru has adopted ILO 169. Law 29785 (2011) “Law of Right to Prior Consultation of Indigenous People” grants IPs right to be consulted before implementation of projects that affect them. Projects need to fulfill requirements of both national legislation and ILO 169. However, this law explicitly excludes <i>campesino communities</i> . State holds all subsurface rights. FPIC not always guaranteed in practice.	Improve NR/land sectoral coordination; Build capacity for public/community consultations

Key Element of Tenure Security <sup>212</sup>	Country Findings	Opportunities for policy/ action/investment
9. Conflict and dispute resolution	Land conflicts are very common in Peru and often arise from exploration and development of natural resources. Within communities the General Assembly may deal with conflicts and disputes. Rural people may face language, economic, cultural and geographic barriers to access to justice. Legal pluralism prevails over many areas between State institutions and local organizations.	Strengthen conflict resolution; Improve NR/land sectoral coordination

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>215</sup>

Project Name	Location	Financier	Budget (millions, US\$)	Duration
Rural Land Titling and Registration Project – Third Phase	National	IDB	80	Ongoing
FCPF Carbon Fund. Peru Emissions Reductions Program	San Martin and Ucayali regions	WB	32	Pipeline
Integrated Forest Landscape Management Project in Atalaya, Ucayali	Ucayali region	WB	12.2	1/2019-8/2024

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

			Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Thematic area / Jurisdiction		Description		
Regional governments lack capacity	National	Regional governments have been assigned roles (i.e. producing titles) they have limited capacity and resources to carry out	High	Moderate
Remaining formalization opportunities are increasingly challenging	National	“Low-hanging fruit” have already been addressed by donors, complicating work by contractors and other entities that expect a diverse range of complexities and costs	High	Moderate
Endemic corruption	National	Corruption in government institutions reduces capacity to support tenure security reforms/implementation	Moderate	Low
Lack of national policy coherence and sectoral coordination	National	National sectoral policy incoherence and institutional weakness imperil efforts to improve IP and LC tenure security	High	Moderate
Inefficient, sporadic titling	National	Sporadic titling is carried out in lieu of systematic titling in order to meet targets, complicating later efforts to complete titling and increasing boundary demarcation and conflict resolution costs	Moderate	High
Encroachment from illegal mining and logging interests	Madre de Dios, etc.	Illegal encroachment from other land uses threaten IP and LC territorial control and formalization efforts	High	Moderate
Growing IP and LC claims overwhelm government capacity	National	Progressive laws from 1970’s have led to increasing claims by IPs and peasant communities to lands, straining government capacity	Moderate	Moderate

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Bottlenecks in titling process & procedures	National	Regional governments are slowed in titling work due to burdensome procedures (i.e. land classification requirements)	High	High
Implementation challenges are highly variable	National	Approaches to improve implementation must be tailored to different contexts (i.e. loggers prevent titling in some areas, IP groups in others); variation of program areas slows overall titling progress	Moderate	High
High turnover in regional/municipal governments	National	High turnover in regional/municipal governments leaves gaps in technical capacity and increases costs and times for titling	High	High
Insufficient donor and project coordination	National	A lack of donor and project coordination threatens to waste resources and increase sectoral conflicts	High	High



## ENDNOTES

1. Rights and Resources Initiative. September 2015. Who Owns the World's Land? A global baseline of formally recognized Indigenous and community land rights.
2. Rights and Resources Initiative. 2018. At a Crossroads: Consequential Trends in Recognition Of Community-Based Forest Tenure From 2002-2017. Accessed at [https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads\\_RRI\\_Nov-2018.pdf](https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads_RRI_Nov-2018.pdf)
3. Bundle of rights ascertained from (1) Alden Wily, L. N. Tagliarino, et al. 2018. Indicators of Legal Security of Indigenous and Community Lands. Data file from LandMark: The Global Platform of Indigenous and Community Lands. Accessed at [www.landmarkmap.org](http://www.landmarkmap.org); and (2) expert interviews.
4. Tenure types are defined by Rights and Resources Initiative's (RRI) statutory typology. Accessed at <https://rightsandresources.org/tenure-tracking/forest-and-land-tenure/>
5. Article 7 of Costa Rica's Constitution provides that international treaties that have been approved by the Legislative Assembly (such as ILO 169) "tendrán desde su promulgación o desde el día que ellos designen, autoridad superior a las leyes.", i.e., in the case of conflict between a national law and an international treaty, the international treaty is the superior law. [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=871&nValor3=95479&strTipM=TC](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=871&nValor3=95479&strTipM=TC)
6. As of 2017, the Inter-American Commission of Human Rights had issued 13 guilty verdicts for infringements of the communal rights that Article 21 of the Pact of San José de Costa Rica recognizes to Indigenous and tribal people. Costa Rica has not been one of these, however it is a party to the American Convention on Human Rights, under which the IACHR has consistently held that the provision protects is Indigenous and tribal property. See [https://scielo.conicyt.cl/scielo.php?script=sci\\_arttext&pid=S0718-97532017000100133](https://scielo.conicyt.cl/scielo.php?script=sci_arttext&pid=S0718-97532017000100133)
7. Baker, R. March 2014. Facilitating Indigenous Involvement in REDD+: Early engagement and consultation in Costa Rica. Case Study by BIC, Mesoamerican Alliance of People and Forests, CATIE.
8. MINAE. October 12, 2018. Emission Reductions Program to the FCPF Carbon Fund – Costa Rica – ERPDP.
9. Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>
10. Costa Rica recognizes Peasant communities (*Asentamientos Campesinos*) via Costa Rican Land Law and Agreement N° 4 of 2011. However, family parcels are emphasized (over collective property). Afro-descendant communities (*Comunidades Afrocostaricenses*) are not collectively recognized under the legal framework, though the country guarantees their rights via anti-discrimination laws.
11. MacKay, F. & A. M. Garro. 2014. Violations of Indigenous Peoples' Territorial Rights: The example of Costa Rica. Forest Peoples Program. Accessed at <https://www.forestpeoples.org/sites/fpp/files/publication/2014/02/violationsterritorialrightscostaricaenglishfeb2014.pdf#page=48> And Derecho Internacional, 2020. Comisión Interamericana de Derechos Humanos admite petición de comunidad indígena Terraba contra Costa Rica: breve puesta en perspectiva. *This article notes findings by the IAHCR that in the views of the Teribe leaders, that the ADII is an imposition of the government, and whose presence in their territory is a negation of their rights to self-governance.* Accessed: <https://www.dipublico.org/116615/comision-interamericana-de-derechos-humanos-admite-peticion-de-comunidad-indigena-terraba-contra-costa-rica-breve-puesta-en-perspectiva/>
12. *According to a ruling by the Constitutional Chamber of Costa Rica's Supreme Court of Justice, when analyzing the status ADIIs (Vote No. 2006-014545). See <http://www.dinadeco.go.cr/indigenas.html>*
13. CEPAL, 2020. Los pueblos indígenas de América Latina – Abya Yala y la Agenda 2030 para el Desarrollo Sostenible Tensiones y desafíos desde una perspectiva territorial. Accessed at: <https://www.cepal.org/es/publicaciones/45664-pueblos-indigenas-america-latina-abya-yala-la-agenda-2030-desarrollo-sostenible>
14. Baker, R. March 2014. Facilitating Indigenous Involvement in REDD+: Early engagement and consultation in Costa Rica. Case Study by BIC, Mesoamerican Alliance of People and Forests, CATIE.
15. A precautionary measure is a protection mechanism of the Inter-American Commission on Human Rights (IACHR), through which it requests a State to protect one or more people who are in a serious and urgent situation from suffering irreparable harm. See: <https://www.oas.org/es/cidh/decisiones/pdf/2015/mc321-12-es.pdf>
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20. As noted previously, Decree N.40932, 2018 may address this gap for FPIC.

21. As per ILO 169, “*The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.*”

22. A key proposition put forward for “Building Back Better” is that families and communities drive their own recovery. This proposition is intrinsic to the World Bank’s proposed response to the COVID-19 crisis, whose second pillar (of four) constitutes its social response. The objective of the social response is to assist countries to protect poor and vulnerable households and communities from the economic and social shocks of the crisis, restore human capital, and promote job creation. To achieve this, an integrated approach centered on community driven development, social protection, and safety nets is proposed. A key constituency in, and target group for, these efforts are Indigenous Peoples, whose well-being, livelihoods and cultural survival tend to be intimately tied to their lands and natural resources. Prior to the pandemic, Costa Rica’s Indigenous Peoples were already disproportionately represented among the poor – 70 percent of Indigenous Peoples’ households according to the UNDP – and have been disproportionately impacted by it.

23. The current one cover FY16-FY20.

24. The lack of internal registries in IP territories has also been flagged by IP leaders as an issue, who see having an internal property registry as a means of avoiding the all-too-common conflicts within families and with neighbors over boundaries. See INDER/MAG. 2016. *Plan De Desarrollo Rural Territorial Talamanca-Valle La Estrella - 2015-2020*.

25. This would also contribute to dealing with an existential issue facing IP communities, especially in the Talamanca Canton, where the great majority of the population is Indigenous and which is the poorest Canton in Costa Rica). There is a “brain-drain” afflicting Indigenous territories that could be slowed by investing in opportunities on IP lands, such as local education related to resource management and supporting the next generation of IP leaders with the freedom and security to pursue their own vision for their lands.

26. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

27. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

28. For example, joint government/community evaluation of land settlement patterns and census of IP and non-IP occupants, with GPS delimitation of non-IP boundaries to inform implementation strategy, strengthen IP legal tenure rights, and provide a baseline for future restoration of rights and recovery of illegally occupied lands.

29. The issues extend beyond the scope of the FCPF, requiring a multi-sectoral response to align different sector projects/programs with explicit/implicit intentions to advance tenure security in the legally declared, but unsecured, IP territories. Specifically, within the broader initiatives for post Covid-19 economic recovery, climate change mitigation/adaptation, and biodiversity conservation, the implementation of the ITRP could be cast as an enabling condition for IP inclusion and welfare, in the context of climate action and biodiversity conservation, to improve their livelihoods and strengthen retain their stewardship role.

30. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

31. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR’s Analytical Framework. See World Bank. 2019. *Securing Forest Tenure Rights for Rural Development – An Analytical Framework*. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

32. MNICR & RIDH. 2019. *Human Rights of Indigenous Peoples of Costa Rica: Empty Promises and Call for Action*.

33. See Ministerio de Ambiente y Energía. 2018. *Marco De Gestión Ambiental Y Social (Mgas)*. REDD+ Costa Rica. Accessed at [https://www.fonafifo.go.cr/media/2901/mecanismo\\_gestionambientalsocial.pdf](https://www.fonafifo.go.cr/media/2901/mecanismo_gestionambientalsocial.pdf)

34. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

35. Includes major Official Development Assistance (ODA) disbursement flows, including bilateral donor agency, multilateral agency and private donor disbursements. Combined disbursements over 2018-2019 period of >US\$1m are included. Multilateral agencies are shown in red, bilateral and country donors are shown in blue and labeled by country. For details about the data, see <https://stats.oecd.org/qwids/about.html>. For a complete list of reporting institutions see Annex XX. Data accessed from: <https://stats.oecd.org>.

36. See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

37. See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

38. Additional definitions of community forests are possible and may include *parcialidad* (owned by kinship communities), municipal forests, and cooperatives (owned by peasant association enterprises). These types of forests developed under different historical and political conditions and may be used for both subsistence and commercial purposes. These share an enabling legal framework with, and are functionally similar, to the communal lands type listed in box. Nevertheless, there is some ambiguity across typologies. For more information see 1) Elías, S. 2015. Protecting forests, improving livelihoods - Community forestry in Guatemala. FERN; and, 2) Kuper, J. 2014. Guatemala Resource Tenure and Sustainable Landscapes Assessment. Washington, DC: USAID Tenure and Global Climate Change Program.

39. Types of tenure (e.g., bundle of rights) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whattrightsnovember13final.pdf>. Bundle of rights from RRI. 2016. Depth of Rights Consolidated Database. Excel spreadsheet provided by RRI.

40. Tenure types are defined by Rights and Resources Initiative's statutory typology:



41. This figure accounts for a loss of 383,560 hectares and a gain of 146,710 hectares of forest over the period from 2006-2016.

42. Garrido, C., P. Emanuelli & A. Calle. 2019. Análisis De Causas De Deforestación Y Degradación De Bosques Y No Aumento De Existencias Y Barreras Que Limitan El Abordaje De Estas Causas.

43. Garrido, C., P. Emanuelli & A. Calle. 2019. Análisis De Causas De Deforestación Y Degradación De Bosques Y No Aumento De Existencias Y Barreras Que Limitan El Abordaje De Estas Causas.

44. The expansion of cattle ranching in the Petén is also often a cover for land grabbing and illicit activities.

45. UNData. Accessed at: <http://data.un.org/en/iso/gt.html>

46. Minority Rights International. Accessed at <https://minorityrights.org/country/guatemala/>

47. For more contextual statistics on forest loss, see: Forest Carbon Partnership Facility. November 2019. Emission Reduction Program Document - Guatemala. Accessed at [https://forestcarbonpartnership.org/system/files/documents/Guatemala\\_ERPD\\_11\\_05\\_2019.pdf](https://forestcarbonpartnership.org/system/files/documents/Guatemala_ERPD_11_05_2019.pdf) and Garrido, C., P. Emanuelli & A. Calle. 2019. Análisis De Causas De Deforestación Y Degradación De Bosques Y No Aumento De Existencias Y Barreras Que Limitan El Abordaje De Estas Causas.

48. For more contextual statistics on poverty & the rural population, see above and Ministry of Social Development, 2019. Indicé de Pobreza Multidimensional. V1.1\_29jul19. Accessed at [https://mppn.org/wp-content/uploads/2019/10/Guatemala-Report-IPM-gt\\_29jul19-v1.1.pdf](https://mppn.org/wp-content/uploads/2019/10/Guatemala-Report-IPM-gt_29jul19-v1.1.pdf)

49. USAID. 2010. Country Profile: Property Rights and Resource Governance – Guatemala. Accessed at [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Guatemala\\_Profile\\_0.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Guatemala_Profile_0.pdf)

50. Barsimantov, J., et al. 2011. When collective action and tenure allocations collide: Outcomes from community forests in Quintana Roo, Mexico and Petén, Guatemala. *Land Use Policy* 28: 343-352. Accessed at [https://d1wqtxts1xzle7.cloudfront.net/16209280/Bars\\_et\\_al.pdf?1338928387=&response-content-disposition=inline%3B+filename%3DWhen\\_collective\\_action\\_and\\_tenure\\_allocation.pdf&Expires=1603076712&Signature=MUNFUh5qusGOql~JwVbrN9WUP9yWQpf6mDeMM8ysMs-mi95m7BOnuGjppzKLPhaKhW5vOZbDNeBc5KuyshPWYsARbprqJdQTTtsgtrTbFoJWvymYMVfNfL7zwr1oJKtHrDF~6Aq23zw2HVuKK8X0fajs9CjgfMBHJKNQZMPgfmkDFTThPeWYek3CidX8tIezL6XBrxNEX4X6GMkRP6hbPlrrOcao467GaaSxP2R3EwHGnf1sNB8QNaN4lhpZ2K5jbaG9dWYqLYU5W-x0X4nP28IaEVgfvh2TKV2v0cJUx6WYH26YUoBKkTtKvKepeZKJaSf-VurWjHmElx0IN5IMcw\\_\\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA](https://d1wqtxts1xzle7.cloudfront.net/16209280/Bars_et_al.pdf?1338928387=&response-content-disposition=inline%3B+filename%3DWhen_collective_action_and_tenure_allocation.pdf&Expires=1603076712&Signature=MUNFUh5qusGOql~JwVbrN9WUP9yWQpf6mDeMM8ysMs-mi95m7BOnuGjppzKLPhaKhW5vOZbDNeBc5KuyshPWYsARbprqJdQTTtsgtrTbFoJWvymYMVfNfL7zwr1oJKtHrDF~6Aq23zw2HVuKK8X0fajs9CjgfMBHJKNQZMPgfmkDFTThPeWYek3CidX8tIezL6XBrxNEX4X6GMkRP6hbPlrrOcao467GaaSxP2R3EwHGnf1sNB8QNaN4lhpZ2K5jbaG9dWYqLYU5W-x0X4nP28IaEVgfvh2TKV2v0cJUx6WYH26YUoBKkTtKvKepeZKJaSf-VurWjHmElx0IN5IMcw__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA)

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52. Forest Carbon Partnership Facility. November 2019. Emission Reduction Program Document - Guatemala. Accessed at [https://forestcarbonpartnership.org/system/files/documents/Guatemala\\_ERPD\\_11\\_05\\_2019.pdf#page=61](https://forestcarbonpartnership.org/system/files/documents/Guatemala_ERPD_11_05_2019.pdf#page=61)

53. Elías, S. 2015. Protecting forests, improving livelihoods - Community forestry in Guatemala. FERN. Accessed at [https://www.fern.org/fileadmin/uploads/fern/Documents/fern\\_forestry\\_guatemala.pdf](https://www.fern.org/fileadmin/uploads/fern/Documents/fern_forestry_guatemala.pdf).

54. E.g., in those municipalities where the majority population is no longer Indigenous and the voice and authority of the traditional Indigenous mayors (alcaldías Indígenas) and community/auxiliary mayors (alcaldías comunitarias o alcaldías auxiliares) have been subsumed by the non-Indigenous municipal government, these lands become viewed as municipal lands, under municipal government control, and no longer customary collective lands as originally intended.

55. Chapter IV of Guatemala's 2012 Municipal Code requires that the municipal government "recognize, respect, and promote the Indigenous mayoralty, when this exists, including its own forms of administrative function"

56. Forest Carbon Partnership Facility. November 2019. Emission Reduction Program Document - Guatemala. Accessed at [https://forestcarbonpartnership.org/system/files/documents/Guatemala\\_ERPD\\_11\\_05\\_2019.pdf](https://forestcarbonpartnership.org/system/files/documents/Guatemala_ERPD_11_05_2019.pdf).

57. Elías, S. 2012. From Communal Forests to Protected Areas: The Implications of Tenure Changes in Natural Resource Management in Guatemala. *Conservation and Society* 10(2): 151-160. Accessed at [https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/8084/ConservatSoc102151-5458683\\_150946.pdf?sequence=1](https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/8084/ConservatSoc102151-5458683_150946.pdf?sequence=1)

58. Environmental Defender Law Center. Guatemala Land Conflicts. Accessed October 5, 2020. <https://edlc.org/cases/mesoamerica/guatemala-land-conflicts/>

59. Abbott, J. 2020. Reviving Indigenous authorities in Guatemala in Briarpatch Magazine May/June 2020. Regina, Saskatchewan. Accessed October 3, 2020: <https://briarpatchmagazine.com/articles/view/reviving-Indigenous-authorities-in-guatemala>

60. Elías, S. 2015. Protecting forests, improving livelihoods - Community forestry in Guatemala. FERN. Accessed at [https://www.fern.org/fileadmin/uploads/fern/Documents/fern\\_forestry\\_guatemala.pdf](https://www.fern.org/fileadmin/uploads/fern/Documents/fern_forestry_guatemala.pdf).

61. Between about US\$11.7 and US\$16.3 million in current dollars

62. Prensa Libre, October 17, 2020. Accessed at: <https://www.prensalibre.com/opinion/columnasdiarias/conap-espera-la-aprobacion-presupuestaria-del-congreso/>

63. CONAP, INAB-BOSCOM, Conservación Internacional, ASOCIACIÓN SOTZIL, Fundación PROPETÉN, CALMECAC, Fundación para la Conservación en Guatemala, FCG, FUNDAECO, CALAS, and TNC

64. Under the World Bank GT (APL2) Land Administration project, RIC approved two regulations, the Regulation on the RIC Law, and the Regulations on the Certification of Communal Lands; identified 45 potential cases of communal lands in 25 municipalities of which 25 requested certification; surveyed the external perimeters of 18 of these, identifying a significant number of boundary conflicts; and certifying four, of which one was Indigenous; made very significant advances in survey, regularization, titling, and registration of lands – including in municipal lands; delimitation of protected areas/natural reserve areas, and archaeological and ceremonial sites (the latter identified, geo-referenced and incorporated into the Registry of the Department of Cultural Resources; and certified and registered 766 professional surveyors and 1,088



technical surveyors into RIC's Registry of Surveyors. The project closed in 2015.

65. One such is the need to expand the focus from its current too narrow focus on productive management of forest resources to a framework that takes in the broader territory and landscape with its multiple opportunities for diversification of both conservation and sustainable livelihood opportunities (e.g., agro-forestry, silvopastoral systems, community tourism, NTFPs, certified organic products such as honey, etc.), as well as strengthening the broader governance by communities of their natural resources.

66. CONAP. 2015. Política De Administración Conjunta y Gestión Compartida Del Sistema Guatemalteco De Áreas Protegidas y De Áreas Naturales De Importancia Para La Conservación De La Diversidad Biológica En Guatemala. Documento Técnico 10-2015. Accessed at [https://conap.gob.gt/wp-content/uploads/2019/10/Politica\\_Conjunta.pdf](https://conap.gob.gt/wp-content/uploads/2019/10/Politica_Conjunta.pdf)

67. *Policy of Joint Administration and Shared Management of the Guatemalan System of Protected Areas and Natural Areas of Importance for the Conservation of Biological Diversity in Guatemala*

68. OEA. 19 October, 2020. La CIDH emite medidas cautelares a favor de familias indígenas maya Poqomchi' de las Comunidades Washington y Dos Fuentes en Guatemala. Accessed at <https://www.oas.org/es/cidh/prensa/comunicados/2020/255.asp>

69. United Nations High Commissioner for Human Rights. 2021. Situation of human rights in Guatemala. Accessed at [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A\\_HRC\\_46\\_74.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_74.docx)

70. For more information on incentives programs and recommended reforms, see Kuper, J. 2014. Guatemala Resource Tenure and Sustainable Landscapes Assessment. Washington, DC: USAID Tenure and Global Climate Change Program. Accessed from [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_TGCC\\_Guatemala\\_Assessment\\_En.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_TGCC_Guatemala_Assessment_En.pdf)

71. World Bank, 2016. Implementation Completion And Results Report for Republic Of Guatemala Land Administration II Project – In Support Of The Second Phase Of The Land Administration Program (APL). IBRD-74170. Report No: ICR00003658

72. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

73. Time-frame categories include the estimated duration of investments and/or project implementation (investments/

activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

74. The World Bank's 2017-2020 Country Partnership Strategy either is now or soon will be in the process of updating. This is an important opportunity and vehicle for moving forward not only on this particular opportunity, but also to engage with GoG on issues of advancing, securing, and leveraging IP and LC land and forest rights as enabling conditions for achievement of objectives across the World Bank's environmental, land, and social portfolio, including FCPF/REDD+, SDGs, Build Back Better, Climate Change Adaptation, Nature-based Solutions, etc.

75. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

76. Survival International. 2010. Guatemala adopts Indigenous rights into Constitution. Accessed at <https://www.survivalinternational.org/news/5613>

77. See Rights and Resources Initiative. 2017. Power and Potential – A Comparative Analysis of National Laws and Regulations Concerning Women's Rights to Community Forests. Accessed at [https://rightsandresources.org/wp-content/uploads/2017/05/Power\\_and\\_Potential\\_Final\\_EN\\_May\\_2017\\_RRI-1.pdf](https://rightsandresources.org/wp-content/uploads/2017/05/Power_and_Potential_Final_EN_May_2017_RRI-1.pdf)

78. See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>

79. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

80. Includes major Official Development Assistance (ODA) disbursement flows, including bilateral donor agency, multilateral agency and private donor disbursements. Combined disbursements over 2018-2019 period of >US\$1m are included. Multilateral agencies are shown in red, bilateral and country donors are shown in blue and labeled by country. For details about the data, see <https://stats.oecd.org/qwids/about.html>. For a complete list of reporting institutions see Annex XX. Data accessed from: <https://stats.oecd.org>

81. Rights and Resources Initiative. September 2018. At a Crossroads: Consequential Trends in Recognition of Community-Based Forest Tenure from 2002-2017. Accessed at [https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads\\_RRI\\_Nov-2018.pdf](https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads_RRI_Nov-2018.pdf)

82. Other types of communal tenure in Chile that exist or have historically existed include Títulos de Merced Antiguos Indivisos, pueblo Mapuche (Antique Indivisible Gifted Titles,

Mapuche Communities), Subsidios Comunitarios (Community Subsidies), Compras de Tierras Comunitario (Community Land Purchases), Transferencias Fiscales (Fiscal Transfers), Regularización propiedad comunitaria (Regularized Community Property), Comunidad Agrícola Diaguita Huasco Alto (Diaguita Agricultural Community of Huasco Alto). Títulos de Merced were granted by the government during the colonization of Araucanía (1884-1929); for more information see the Mapuche Data Project. 2020. Land Data. Accessed at <http://mapuchedataproject.cl/en/land-data/>.

83. Types of tenure (e.g., bundle of rights) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whattrightsnovember13final.pdf>

2016. Depth of Rights Consolidated Database. Excel spreadsheet provided by RRI.

84. Tenure data obtained several literature sources and from L. Alden Wily, N. Tagliarino, et al. 2018. Indicators of the Legal Security of Indigenous and Community Lands. Data file from LandMark: The Global Platform of Indigenous and Community Lands. Accessed at [www.landmarkmap.org](http://www.landmarkmap.org)

85. WRI. 2017. The Scramble for Land Rights: Reducing inequity between communities and companies. Accessed at <https://files.wri.org/s3fs-public/scramble-land-rights.pdf>

86. As of 2017, over 8 million hectares are included in ADIs over 6 regions. See ENCCRV. July 2017. Informative Note 10: Analysis of the condition of land tenure for supporting the implementation of the 2017-2025 National Strategy on Climate Change and Vegetation Resources (ENCRRV). Accessed at <https://www.enccrv.cl/informative-note-10>

87. Different data has been reported by IWGIA, perhaps due to different reporting periods for the statistic (<https://www.iwgia.org/en/chile/3393-iw2019-chile.html>). Mapuche Data Project. 2020. Land Data. Website accessed at <http://mapuchedataproject.cl/en/land-data/>

88. As of a 2017 analysis, implementing regulations are missing due to a legal opinion (*Dictamen de la Contraloría General de la República No. 61011*). For more information see World Resources Institute. 2017. The Scramble for Land Rights: Reducing Inequity between Communities and Companies. Accessed at <https://files.wri.org/s3fs-public/scramble-land-rights.pdf>

89. WRI. 2017. The Scramble for Land Rights: Reducing inequity between communities and companies. Accessed at <https://files.wri.org/s3fs-public/scramble-land-rights.pdf#page=66>

90. Other Indigenous peoples in Chile include (but are not necessarily limited to) the Aymara, Diaguita, Atacameño,

Quechua, Colla, Kawésqar, Rapanui, Yámana or Yagán and the Likan Antai.

91. Seclau, L.M. & R. Seclau. 2014. Making Indigenous self-determination work: What the nation building principles and three case studies from Chile teach us about implementing Indigenous human rights. *American Indian Law Review* 39(1): 137-199. Accessed at <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1002&context=ailr>

92. Forest Legality Initiative. 2014. Chile – Laws & Regulations. Accessed at <https://forestlegality.org/risk-tool/country/chile>

93. Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized - Technical Report. Accessed at <https://rightsandresources.org/publication/estimate-of-the-area-of-land-and-territories-of-indigenous-peoples-local-communities-and-afro-descendants-where-their-rights-have-not-been-recognized/>

94. The RRI report states that this is likely an underestimate, as historic reports suggest a far larger area held by the Mapuche people than is legally recognized today (pp. 27). See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

95. <https://freedomhouse.org/country/chile/freedom-world/2020>

96. <https://www.nytimes.com/2020/10/25/world/americas/chile-constitution-plebiscite.html>

97. <https://www.bloomberg.com/news/articles/2020-10-15/amid-fire-and-clashes-chile-s-mapuche-see-road-to-reparations>

98. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

99. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

100. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR.

Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

101. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

102. WRI. 2017. The Scramble for Land Rights: Reducing inequity between communities and companies. Accessed at <https://files.wri.org/s3fs-public/scramble-land-rights.pdf>

103. Bugue, F., De Los R, I. and Casta, R., 2017. Responsible Land Governance and Project Management Competences for Sustainable Social Development. The Chilean-Mapuche Conflict. *International Journal of Economics and Financial Issues*, 7(6), p.202. Accessed at <https://core.ac.uk/download/pdf/159466052.pdf>

104. Forest Carbon Partnership Facility. 2016. Emission Reductions Program Document – Chile. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/ER-PD%20Chile-%20Final-%2024%20Octubre%202016\\_0.pdf#page=113](https://www.forestcarbonpartnership.org/system/files/documents/ER-PD%20Chile-%20Final-%2024%20Octubre%202016_0.pdf#page=113)

105. Salas-Eljatib et al. 2016. The Forest Sector in Chile: An Overview and Current Challenges. *Journal of Forestry* 114(5):562-571

106. The Guardian. June 14, 2018. Indigenous Chileans defend their land against loggers with radical tactics. Accessed at <https://www.theguardian.com/world/2018/jun/14/chile-mapuche-Indigenous-arson-radical-environmental-protest>

107. Centro por la Justicia y el Derecho Internacional. July 30, 2014. Inter-American Court of HR condemns Chile for applying the Antiterrorist Law to members of the Mapuche community. Accessed at <https://cejil.org/en/inter-american-court-hr-condemns-chile-applying-antiterrorist-law-members-mapuche-community-0>

108. Inter-American Court of Human Rights. May 29, 2014. INTER-AMERICAN COURT OF HUMAN RIGHTS CASE OF NORÍN CATRIMÁN ET AL.(LEADERS, MEMBERS AND ACTIVIST OF THE MAPUCHE INDIGENOUS PEOPLE)v. CHILEJUDGMENT OF MAY 29, 2014(MERITS, REPARATIONS AND COSTS). Accessed at [https://www.corteidh.or.cr/corteidh/docs/casos/articulos/seriec\\_279\\_ing.pdf](https://www.corteidh.or.cr/corteidh/docs/casos/articulos/seriec_279_ing.pdf)

109. UN News. July 31, 2013. Chile must stop using anti-terrorism law against Mapuche Indigenous group – UN expert. Accessed at <https://news.un.org/en/story/2013/07/445902-chile-must-stop-using-anti-terrorism-law-against-mapuche-Indigenous-group-un>

110. Medium-large projects (=significant) are those over US\$1 million in size, include direct project expenditures and administration. Projects listed include a significant component

devoted to strengthening community-based collective land tenure.

111. During the United States' military occupation in the 1920s, communal landholders and squatters without title to their land lost it to commercial and large plantation interests, which added these properties to their landholdings. In the early 1970s, under the Trujillo dictatorship, a collective form of agrarian reform gained prominence, which was applicable only to rice lands. Beneficiaries no longer worked individual parcels, but rather worked in groups and divided profits equally. In 1979, this type of agrarian reform was applied to all programs of the Instituto Agrario Dominicana; efforts which apparently ended in 1985. Source: [https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1159&context=books\\_reports\\_studies](https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1159&context=books_reports_studies)

112. In the Dominican Republic, local communities mostly refer to small-scale farmers and farming communities with a relationship to territory and have a communal identity

113. Principle III of the Real Estate Registry Law

114. Constitucion de la Republica Dominicana, updated by 2015.

115. Figure comes from USAID's Land Links profile for the Dominican Republic <https://www.land-links.org/country-profile/dominican-republic/>

116. Figures come from USAID's Land Links profile for the Dominican Republic <https://www.land-links.org/country-profile/dominican-republic/>

117. <https://titulacion.gob.do/>

118. From the Strategic Social and Environmental Assessment under the REDD+

119. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

120. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

121. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

122. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)



123. Finding from the R-Package report [https://www.forestcarbonpartnership.org/system/files/documents/R-Package%20Dominican%20Republic%20Feb%2021%202019\\_EN.pdf](https://www.forestcarbonpartnership.org/system/files/documents/R-Package%20Dominican%20Republic%20Feb%2021%202019_EN.pdf)

124. This claim is sourced from the R-Package report [https://www.forestcarbonpartnership.org/system/files/documents/R-Package%20Dominican%20Republic%20Feb%2021%202019\\_EN.pdf](https://www.forestcarbonpartnership.org/system/files/documents/R-Package%20Dominican%20Republic%20Feb%2021%202019_EN.pdf)

125. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

126. See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

127. 2017 data from INEGI 2007, as cited by Rights and Resources Initiative. 2018. At a Crossroads: Consequential Trends in Recognition of Community-Based Forest Tenure From 2002-2017. Accessed at [https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads\\_RRI\\_Nov-2018.pdf](https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads_RRI_Nov-2018.pdf)

128. There is some disagreement in the literature about the total extent of forest in Mexico (due, in part, to challenges classifying forest cover). Statistics here are calculated from the FCPF. 2017. Emission Reductions Program Document. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/\\_\\_\\_ENGLISH\\_6november\\_2017\\_Mx.pdf](https://www.forestcarbonpartnership.org/system/files/documents/___ENGLISH_6november_2017_Mx.pdf)

129. Types of tenure (e.g., bundle of rights) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whattrightsnovember13final.pdf>

2016. Depth of Rights Consolidated Database. Excel spreadsheet provided by RRI.

130. Tenure types are defined by Rights and Resources Initiative's (RRI) statutory typology:

131. Only *ejidos* are able to alienate land (as a result of the 1992 reforms; alienation of forested land is not permitted by the reforms but is carried out via extralegal mechanisms – see Barsimantov et al. 2011 reference below). Despite not being able to alienate land, agrarian communities have the potential to convert first to an *ejido*, and later alienate land.

132. SEMARNAT. 2017. Anuario Estadístico de la Producción Forestal. Table 1.1: Número de autorizaciones y superficie bajo manejo forestal autorizado vigente en 2017, por tipo de propiedad. Accessed at <http://dsiappsdev.semarnat.gob.mx/datos/portal/publicaciones/2020/2017.pdf#page=20>

133. USAID. 2017. Land Links – Country Profile, Mexico. Accessed from <https://www.land-links.org/country-profile/mexico/#1528829074990-0a0886d1-a806>

134. In Áreas Naturales Protegidas and some other forest areas (i.e., jungle) an environmental impact assessment is also necessary for SEMARNAT approval.

135. PROIGUALDAD cited by FCPF. 2017. Emission Reductions Program Document. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/\\_\\_\\_ENGLISH\\_6november\\_2017\\_Mx.pdf#page=83](https://www.forestcarbonpartnership.org/system/files/documents/___ENGLISH_6november_2017_Mx.pdf#page=83)

136. Durán, T. G. 22 January 2020. Mexico: Community forestry boosts conservation, jobs, and social benefits. Mongabay. Accessed at <https://news.mongabay.com/2020/01/mexico-community-forestry-boosts-conservation-jobs-and-social-benefits/>

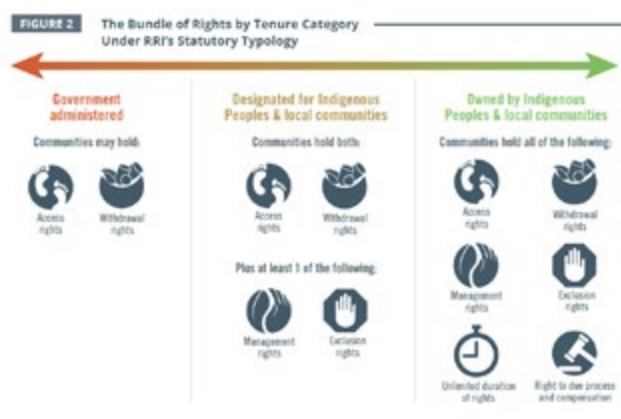
137. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

138. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

139. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

140. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

141. Rights and Resources Initiative. 2017. Power and Potential – A Comparative Analysis of National Laws and Regulations Concerning Women's Rights to Community Forests. Accessed at [https://rightsandresources.org/wp-content/uploads/2017/05/Power\\_and\\_Potential\\_Final\\_EN\\_May\\_2017\\_RRI-1.pdf](https://rightsandresources.org/wp-content/uploads/2017/05/Power_and_Potential_Final_EN_May_2017_RRI-1.pdf)



142. USAID. 2017. Land Links – Country Profile, Mexico. Accessed from <https://www.land-links.org/country-profile/mexico/#1528829074990-0a0886d1-a8063#page=14>

143. Registro Agrario Nacional 2007 cited by Barsimantov et al. 2011. When collective action and tenure allocations collide: Outcomes from community forests in Quintana Roo, Mexico and Petén, Guatemala. Land Use Policy 28: 343–352

144. See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

145. FCPF. 2017. Emission Reductions Program Document. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/\\_ENGLISH\\_6november\\_2e017\\_Mx.pdf#page=50](https://www.forestcarbonpartnership.org/system/files/documents/_ENGLISH_6november_2e017_Mx.pdf#page=50)

146. See below for passage from Barsimantov et al. 2011. When Collective Action and Tenure Allocations Collide: Outcomes from community forests in Quintana Roo, Mexico and Petén, Guatemala. Land Use Policy 28: 343–352:

“In addition to political and cultural opposition to privatization of common land, the limited response of Quintana Roo ejidos to gaining alienation rights may be due to federal restrictions on privatizing forested lands. It is illegal to create individual parcels in forested land, and decisions to title non-forested land for eventual sale need to be approved by two thirds of community members (Government of Mexico, 1992). While de jure alienation rights to common forested land cannot be legally attained, many ejidos have attained alienation rights by extralegal mechanisms. A common mechanism is the illegal division and distribution of common lands to ejido members with a certificate of ownership granted through the PROCEDE program. This certificate does not legally entitle the possessor to sell and transfer land, but is respected internally by ejido members and is used to transfer and sell land. This has occurred mostly where land prices are higher, including coastal areas, the peri-urban zone, and areas suitable for planting high-value crops (Barsimantov et al., 2010; Barsimantov, 2009; Luers et al., 2006; Jones and Ward, 1998). In addition, while forested land may not be legally alienated, under the reform, membership rights can be; as such this is one mechanism used to transfer ownership and access benefits in forested ejidos.”

147. As of October 2020, the Mining Law does not require prior consultation with Indigenous Peoples for the issuance of mining concessions on their lands. However, a recent constitutional rights protection claim filed by an *ejido* in the State of Puebla was ruled against the Mexican Mines Bureau, Ministry of Economy and the President, cancelling

a concession on the *ejido*'s land because the mining company did not carry out prior consultation with the community as required by treaties ratified by Mexico. As part of the ruling, the court resolved that the Mexican Federal Congress must amend the Mining Law to incorporate FPIC. For more details, see: ICLG. 10/09/2020. Mexico: Mining Laws and Regulations 2021. Accessed at <https://iclg.com/practice-areas/mining-laws-and-regulations/mexico>

148. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

149. <https://news.mongabay.com/2020/01/mexico-community-forestry-boosts-conservation-jobs-and-social-benefits/>

150. Forest Carbon Partnership Facility – Carbon Fund. Caribbean Coast Emission Reduction Program Document (ER-PD). July 31, 2019. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/ERPDIINGLES\\_310719\\_VF.pdf](https://www.forestcarbonpartnership.org/system/files/documents/ERPDIINGLES_310719_VF.pdf)

151. Types of tenure (e.g., bundle of rights) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whatrightsnovember13final.pdf>

152. Bundle of rights ascertained from 1) L. Alden Wily, N. Tagliarino, et al. 2018. Indicators of Legal Security of Indigenous and Community Lands. Data file from LandMark: The Global Platform of Indigenous and Community Lands. Accessed at [www.landmarkmap.org](http://www.landmarkmap.org); and, 2) MARENA. 2017. Evaluación sobre la tenencia de la tierra y los recursos naturales en la Costa Caribe, la Reserva de la Biosfera BOSAWAS y la Reserva Biológica Indio-Maiz. Accessed at <http://www.marena.gob.ni/Enderedd/wp-content/uploads/2019/05/Evaluaci%C3%B3n-Tenencia-de-la-Tierra-ERPDI.pdf#page=67>.

153. An additional category of communal land, *ejidal* lands, were excluded from this analysis as they are lands owned by municipalities, not IPs and LCs. Cooperative properties (including agricultural cooperatives) are owned by autonomous associations of people and were initiated during agrarian reforms of the 1980s and 1990s and represent another minor type of collective tenure.

154. Forest Carbon Partnership Facility – Carbon Fund. Caribbean Coast Emission Reduction Program Document (ER-PD). July 31, 2019. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/ERPDIINGLES\\_310719\\_VF.pdf](https://www.forestcarbonpartnership.org/system/files/documents/ERPDIINGLES_310719_VF.pdf)

155. Hodgdon et al. November 2015. The Centrality of Social Capital: Forestry and Enterprise Development Among the Indigenous Mayangna of Awas Tingni (North Atlantic

Autonomous Region, Nicaragua). Case study by Rainforest Alliance & Multilateral Investment Fund. Accessed at <https://www.rainforest-alliance.org/sites/default/files/2016-08/awas-tingni.pdf#page=21>

156. “In 2001, the Inter-American Court of Human Rights – the highest tribunal in the Americas – held that the Mayangna community of Awas Tingni had customary rights to their property and the GON violated these rights by granting concessions to a foreign lumber company. In a second 2001 case, the same court ordered the GON to title the Awas Tingni’s lands. The ruling in Mayagna (Sumo) Community of Awas Tingni v. Nicaragua is the first instance in which an international tribunal with legally binding authority has found a government in violation of the collective land rights of an Indigenous group, setting an important precedent for the rights of Indigenous Peoples under international law (University of Arizona 2009; COHRE 2003).” Text cited from USAID. 2011. Nicaragua – Property Rights and Resource Governance Profile. Accessed at [https://land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Nicaragua\\_Profile.pdf](https://land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Nicaragua_Profile.pdf)

157. Based on the Sylvander’s summary of five steps of land demarcation and titling – see Sylvander, N., 2018. Saneamiento territorial in Nicaragua, and the prospects for resolving Indigenous-Mestizo land conflicts. *Journal of Latin American Geography*, 17(1), pp.166-194.

158. The term *terceros* encompasses mestizo settlers, migrants and colonos. In common usage these terms are used synonymously.

159. The vast majority of *tercero* titles appear to be illegitimate, in the range of 70-80 percent. See Mairena et al (2014) referenced in Sylvander, N. 2018. Saneamiento Territorial in Nicaragua, and the Prospects for Resolving Indigenous-Mestizo Land Conflicts. *Journal of Latin American Geography*. Accessed at <https://par.nsf.gov/servlets/purl/10096484>

160. Sylvander, N. 2018. Saneamiento Territorial in Nicaragua, and the Prospects for Resolving Indigenous-Mestizo Land Conflicts. *Journal of Latin American Geography*. Accessed at <https://par.nsf.gov/servlets/purl/10096484>

161. See discussion of internal migration and *terceros* beginning on page 180 of Sylvander, N. 2018. Saneamiento Territorial in Nicaragua, and the Prospects for Resolving Indigenous-Mestizo Land Conflicts. *Journal of Latin American Geography*. Accessed at <https://par.nsf.gov/servlets/purl/10096484>

162. See Robles, F. Oct 16, 2016. Nicaragua dispute over Indigenous land erupts in wave of killings. *New York Times*. Accessed at <https://www.nytimes.com/2016/10/17/world/>

[americas/nicaragua-dispute-over-Indigenous-land-erupts-in-wave-of-killings.html](https://www.nytimes.com/2016/10/17/world/americas/nicaragua-dispute-over-Indigenous-land-erupts-in-wave-of-killings.html)

163. CEJIL. Aug. 14, 2019. Report reveals that Attacks against Indigenous Miskitu community in Nicaragua has Put Them at Risk of Disappearance. Accessed at <https://www.cejil.org/en/report-reveals-attacks-against-Indigenous-miskitu-community-nicaragua-has-put-them-risk>

164. The Regional Councils are comprised of representatives of political parties such as the FSLN and YATAMA and the municipalities

165. For more discussion on decentralization and government responsibilities, see Larson, A. M., & Lewis-Mendoza, J. (2012). Decentralisation and devolution in Nicaragua’s North Atlantic autonomous region: Natural resources and Indigenous peoples’ rights. *International Journal of the Commons*, 6(2), 179–199. Accessed at <https://www.thecommonsjournal.org/articles/10.18352/ijc.315/>

166. Hodgdon et al. November 2015. The Centrality of Social Capital: Forestry and Enterprise Development Among the Indigenous Mayangna of Awas Tingni (North Atlantic Autonomous Region, Nicaragua). Case study by Rainforest Alliance & Multilateral Investment Fund. Accessed at <https://www.rainforest-alliance.org/sites/default/files/2016-08/awas-tingni.pdf>.

167. See Evans et al. 2017. Challenges for women’s participation in communal forests: experience from Nicaragua’s Indigenous territories. *Women’s Studies International Forum* 65: 37-46. Accessed at <https://reader.elsevier.com/reader/sd/pii/S0277539515301783?token=E5DB2007CCBD904CF0B02A5B1935D7B57D2086E72745812BAEB18DBB704795CFBDF30301E9AB06FEFE31C977CF755E0B>.

168. Acosta, M. L. 2020. Indigenous World 2020: Nicaragua. Website of the International Work Group for Indigenous Affairs (IWGIA). Accessed at <https://www.iwgia.org/en/nicaragua/3626-iw-2020-nicaragua.html>.

169. The claims were filed under Law 445; the new land claim was 7 percent of that filed by the original Bluefields Creole Communal Government.

170. See Mittal et al. 2020. Nicaragua’s Failed Revolution – The Indigenous Struggle for Saneamiento. The Oakland Institute. Accessed at <https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/nicaraguas-failed-revolution.pdf>

171. Despite the relative progressiveness of Law No. 445, the procedures outlined for securing Indigenous and Afro-descendant Peoples’ tenure only apply to the Indigenous and Afro-descendant communities of the Caribbean Coast – the Indigenous Peoples of Central and Northern Pacific regions lack such a legal framework.

172. United Nations Office of the High Commissioner for Human Rights. February 7, 2020. Press briefing note on Nicaragua. Accessed at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25532&LangID=E>
173. UN News. February 1, 2021. Nicaragua: Amidst ‘socio-political and human rights crisis’, independent expert condemns environmental defender’s death. Accessed at <https://news.un.org/en/story/2021/02/1083502>
174. UNHCR. 2020. Nicaragua Situation – Fact Sheet. Accessed at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjckrTiwlLuAhVXop4KHUIOBV0QFjACegQIBRAD&url=https%3A%2F%2Fdata2.unhcr.org%2Fen%2Fdocuments%2Fdownload%2F79621&usg=AOvVaw21bVY-txCqGKw0n2CLpqGC>
175. Freedom House. 2020. Nicaragua. Accessed at <https://freedomhouse.org/country/nicaragua/freedom-world/2020>
176. World Bank. 2020. The World Bank in Nicaragua – Overview. Website accessed at <https://www.worldbank.org/en/country/nicaragua/overview>
177. Initial estimates by the Government of Nicaragua put damages and losses due to the hurricanes at 6.2% of GDP. Source: FAO. 2021. The Republic of Nicaragua - Urgent call for assistance. Accessed at <http://www.fao.org/emergencies/resources/documents/resources-detail/en/c/1367740/>
178. Maloney, A. November 14, 2020. Storm Eta damage pushes small, Indigenous farmers in Central America into hunger. Reuters. Accessed at <https://www.reuters.com/article/us-latam-farming-Indigenous-trfn/storm-eta-damage-pushes-small-Indigenous-farmers-in-central-america-into-hunger-idUSKBN27U0Q1>
179. Ritchie, H., and M. Roser. 2019. Urbanization – Share of People Living in Urban Areas, 2017. Our World in Data, Website. Accessed at <https://ourworldindata.org/urbanization?source=:so:li:or:awr:ohcm:>
180. World Bank. 2016. Central America - 6C Central America Urbanization Review: MAKING CITIES WORK FOR CENTRAL AMERICA. Accessed at <http://documents1.worldbank.org/curated/en/138761468222286062/pdf/ACS18375-WP-PUBLIC-Final-Report-has-been-approved-P152713.pdf>
181. <https://freedomhouse.org/country/nicaragua/freedom-world/2020#PR>
182. See Transparency International. Accessed at <https://www.transparency.org/en/countries/nicaragua#>
183. United Nations News. 1 Feb 2021. Nicaragua: Amidst ‘socio-political and human rights crisis.’ independent expert condemns environmental defender’s death. Accessed at <https://news.un.org/en/story/2021/02/1083502>; ABC News/Associated Press. 29 April 2020. Report: Nicaragua Government Failing to Protect Indigenous Peoples. Accessed at <https://abcnews.go.com/international/wirestory/report-nicaragua-government-failing-protect-indigenous-70405424>
184. <https://unctad.org/webflyer/world-investment-report-2020>
185. Nicaragua ranked 142nd out of 190 countries in the 2020 World Bank’s Doing Business report, a ten-spot drop compared to 2019.
186. FMO - a public-private entrepreneurial development bank, under the supervision of the Dutch Central Bank; Finnfund – a development financier/impact investor, under the supervision of Finland’s Foreign Ministry.
187. See Hodgdon et al. November 2015. The Centrality of Social Capital: Forestry and Enterprise Development Among the Indigenous Mayangna of Awas Tingni (North Atlantic Autonomous Region, Nicaragua). Case study by Rainforest Alliance & Multilateral Investment Fund. Accessed at <https://www.rainforest-alliance.org/sites/default/files/2016-08/awas-tingni.pdf>
188. World Bank. 2018. Nicaragua Property Rights Strengthening Project - Project Appraisal Document. Accessed at <https://www.gtai.de/resource/blob/42668/a8d85bc2813c5546af97a7c93b90d352/pro201803285004-data.pdf#page=29>
189. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.
190. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.
191. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.
192. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR’s Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)
193. Forest Carbon Partnership Facility – Carbon Fund. Caribbean Coast Emission Reduction Program Document (ER-PD). July 31, 2019. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/ERPD\\_INGLES\\_310719\\_VF.pdf#page=80](https://www.forestcarbonpartnership.org/system/files/documents/ERPD_INGLES_310719_VF.pdf#page=80)



194. Evans, K., et al. 2017. Challenges for women's participation in communal forests: Experience from Nicaragua's indigenous territories. *Women's Studies International Forum* 65: 37-46. Accessed at <https://reader.elsevier.com/reader/sd/pii/S0277539515301783?token=E5DB2007CCBD904CF0B02A5B1935D7B57D2086E72745812BAEB18DBB704795CFBDF30301E9AB06FEFE31C977CF755E0B>.

195. Hodgdon et al. November 2015. The Centrality of Social Capital: Forestry and Enterprise Development Among the Indigenous Mayangna of Awas Tingni (North Atlantic Autonomous Region, Nicaragua). Case study by Rainforest Alliance & Multilateral Investment Fund. Accessed at <https://www.rainforest-alliance.org/sites/default/files/2016-08/awas-tingni.pdf#page=6>

196. USAID. 2011. Country Profile – Property Rights and Resource Governance: Nicaragua. Accessed at [https://land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Nicaragua\\_Profile.pdf#page=13](https://land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Nicaragua_Profile.pdf#page=13)

197. Freedom House. 2020. Nicaragua. Accessed at <https://freedomhouse.org/country/nicaragua/freedom-world/2020>

198. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

199. See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

200. Rights and Resources Initiative. 2018. At a Crossroads: Consequential trends in recognition of community-based forest tenure 2002-2017. Accessed at [https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads\\_RRI\\_Nov-2018.pdf](https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads_RRI_Nov-2018.pdf)

201. Types of tenure (e.g., bundle of rights) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whattrightsnovember13final.pdf>.

Bundle of rights ascertained at Rights and Resources Initiative. 2016. Depth of Rights Consolidated Database. Excel spreadsheet provided by RRI.

202. Tenure types are defined by Rights and Resources Initiative's (RRI) statutory typology:



203. FCPF. June 3, 2019. Emission Reduction Program Document (ER-PD): Reducing emissions from San Martín and Ucayali in the Peruvian Amazon, Peru. Accessed at <https://forestcarbonpartnership.org/system/files/documents/ERPDP%20PERU%20Final.pdf>

204. Instituto del Bien Común. 2020. Website. Accessed at <https://ibcperu.org/servicios/sicna-informacion-sobre-comunidades-de-la-amazonia/>.

205. See Rights and Resources Initiative. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

206. Larson, A., et al. 2016. Community rights to forests in the tropics: Progress and retreat on tenure reforms. Chapter in M. Graziadei and L. Smith, eds., *Comparative Property Law: Global Perspectives* (Cheltenham: Edward Elgar, 2016).

207. Ley de Bases de Descentralización del 2002 (Law N° 27783), y la Ley Orgánica de los Gobiernos Regionales del 2002 (Law N° 27867)

208. See Shanee & Shanee. 2016. Land Trafficking, Migration, and Conservation in the “No-Man’s Land” of Northeastern Peru. *Tropical Conservation Science*. 2016. 1-16. Accessed at <https://journals.sagepub.com/doi/pdf/10.1177/1940082916682957#page=8>

209. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

210. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

211. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

212. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

213. Rights and Resources Initiative. 2017. Power and Potential – A Comparative Analysis of National Laws and

Regulations Concerning Women's Rights to Community Forests. Accessed at [https://rightsandresources.org/wp-content/uploads/2017/05/Power\\_and\\_Potential\\_Final\\_EN\\_May\\_2017\\_RRI-1.pdf](https://rightsandresources.org/wp-content/uploads/2017/05/Power_and_Potential_Final_EN_May_2017_RRI-1.pdf)

214. Instituto del Bien Común. 2020. Accessed at <https://ibcperu.org/servicios/sicna/>

215. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

# ASIA AND PACIFIC COUNTRY PROFILES

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## Deep Dive Country Profile

# INDONESIA\*

### COMMUNITY FOREST TENURE IN INDONESIA AT A GLANCE

Total forest area under communal designation (million hectares) / percent of national forest area under communal designation	0.79 <sup>1</sup> / <b>0%</b>
Total forest area under communal ownership (million hectares) / percent of national forest area under communal ownership	0.01 <sup>2</sup> / <b>0%</b>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Ministry of Environment and Forestry (MoEF) and its Directorate-Generals of Law Enforcement for Environment and Forestry; Social Forestry and Environmental Partnership; and Managing Conflict, Tenure and Customary Forest</li> <li>» Ministry of Agrarian and Spatial Planning (MoASP)</li> <li>» Presidential Delivery Unit for Development Monitoring and Oversight (UKP4)</li> <li>» Ministry of National Development Planning (BAPPENAS)</li> <li>» Ministry of Home Affairs</li> <li>» Ministry of Villages, Disadvantaged Regions and Transmigration</li> <li>» MoEF has authority over forest land and the National Land Agency (BPN) has authority over lands classified as non-forest.</li> </ul>
FCPF REDD+ Jurisdictions:	The main REDD+ subnational focus is on East Kalimantan Province. Further REDD+ subnational activities are taking place in other parts of Kalimantan and Jambi Province (Sumatra). Subnational REDD+ institutions have been developed in 11 provinces and are in development in 23 other provinces. There is also planning at the national level.
FCPF REDD+ Advancements:	ERPA signed in December 2020.

## COMMUNITY TENURE CATEGORIES IN INDONESIA<sup>3</sup>

<p><b>Indigenous Community Forests</b> <b>(Hutan Masyarakat Adat)</b></p> <p>Customary forests (<i>hutan adat</i>) belonging to the customary communities (<i>masyarakat adat</i>) that were controlled indirectly by the state, and state forests controlled directly by the state through the MoEF.</p>	<p><b>RRI Tenure Type<sup>4</sup>: Owned</b></p> <p><b>Access:</b> Limited, communities have the right to utilize the forest and forest products in accordance with prevailing laws and regulations (Art. 68, Basic Forestry Law N° 41/1999). In practice, due to an unclear definition of <i>adat</i>,<sup>5</sup> communities have difficulties exercising these rights.</p> <p><b>Withdrawal:</b> Yes</p> <p><b>Management:</b> Yes</p> <p><b>Exclusion:</b> Yes</p> <p><b>Alienation:</b> No</p> <p><b>Due Process and Compensation:</b> Yes, communities within and around the forest have the right to be compensated when access to their surrounding forests is restricted due to its designation as forest area.</p> <p><b>Duration:</b> Unlimited</p>
<p><b>Rural or Community Forests</b> <b>(Hutan Kemasyarakatan)</b></p> <p>Rural forests empower local communities by granting rural institutions rights to exploit forest resources. Exploitation rights cover area arrangement, formulation of a Management Plan, and the utilization and rehabilitation of forests (Art. 87, Regulation N° 6/2007).</p>	<p><b>RRI Tenure Type: Designated</b></p> <p><b>Access:</b> Limited, exploitation rights cover area arrangement, formulation of a Management Plan, and the utilization and rehabilitation of forests.</p> <p><b>Withdrawal:</b> Yes</p> <p><b>Management:</b> Limited, rural institutions are obliged to manage forest in accordance with sustainable forest management principles and Management Plans.</p> <p><b>Exclusion:</b> Yes, communities can only receive rights to forest resources under this tenure regime in areas where third parties have not been given a license to exploit a particular forest area.</p> <p><b>Alienation:</b> No</p> <p><b>Due Process and Compensation:</b> Yes, according to terms of contract. No compensation.</p> <p><b>Duration:</b> 35 years (renewable)</p>
<p><b>Partnership (Kemitraan)</b></p> <p>A partnership is a way to empower local communities by giving them access to forest resources based on an agreement between those with a business license to exploit forests or those with rights to exploit forests and local communities (Art. 99, Government Regulation N° 6/2007).</p>	<p><b>RRI Tenure Type: Government Administered</b></p> <p><b>Access:</b> Case-by-case, access rights depend on each Partnership Agreement (Art. 99, Government Regulation N° 6/2007).</p> <p><b>Withdrawal:</b> Case-by-case, access rights depend on each Partnership Agreement (Art. 99, Government Regulation N° 6/2007).</p> <p><b>Management:</b> Case-by-case, access rights depend on each Partnership Agreement (Art. 99, Government Regulation N° 6/2007).</p> <p><b>Exclusion:</b> No</p> <p><b>Alienation:</b> Not Disclosed</p> <p><b>Due Process and Compensation:</b> Yes, according to terms of contract. No compensation.</p> <p><b>Duration:</b> Limited</p>
<p><b>Plantation and Silviculture</b> <b>(Hutan Tanaman Rakyat)</b></p> <p>A timber plantation established in degraded production forest areas by individuals, households or village cooperatives to improve the productivity potential of the forest through enrichment planting and the application of appropriate silvicultural practices (MoEF, Regulation N° 23/2007).</p>	<p><b>RRI Tenure Type: Designated</b></p> <p><b>Access:</b> Yes, once a village cooperative has a business license that has been approved by the authorities, they may access the forest area.</p> <p><b>Withdrawal:</b> Yes</p> <p><b>Management:</b> Yes</p> <p><b>Exclusion:</b> Yes, a business license is given to an individual or village cooperative.</p> <p><b>Alienation:</b> No</p> <p><b>Due Process and Compensation:</b> Yes, according to terms of contract. No compensation.</p> <p><b>Duration:</b> Up to 60 years</p>

**Hutan Desa** A state forest not encumbered by previous rights and managed by a village to improve general village welfare (GR No. 6/2007).

**RRI Tenure Type: Designated**

**Access:** Yes

**Management:** Yes, subsistence and commercial non-timber forest products (NTFP) and timber withdrawal rights.

**Withdrawal:** Yes

**Exclusion:** Yes

**Alienation:** No

**Due Process and Compensation:** Yes

**Duration:** Limited, 35 years (renewable)

**Hak Komunal** A communal territory with joint ownership of the land of a customary law community, or joint ownership of land granted to a community located in a particular area.

**RRI Tenure Type: Designated**

**Access:** Yes

**Management:** Yes, subsistence and commercial NTFP withdrawal rights and timber withdrawal rights on a case-by-case basis.

**Withdrawal:** TBD

**Exclusion:** No

**Alienation:** No

**Due Process and Compensation:** No

**Duration:** Unlimited

## SUMMARY: FOREST RIGHTS AND KEY ISSUES

Indonesia is considered a global high-priority country in terms of reducing greenhouse gas (GHG) emissions from deforestation and forest degradation. Indonesia has committed to a reduction of up to 41 percent of its emissions by 2030 with international support, and the country recognizes that a significant share of emission reductions will have to come from reducing deforestation and degradation. REDD+ is recognized as being an important component of achieving these targets in the land-use sector and, in setting these targets, illegal logging and unplanned deforestation are included in the assumptions for estimating emissions under the ‘business as usual’ scenario. The main REDD+ subnational focus is on East Kalimantan Province. Further REDD+ subnational activities are taking place in other parts of Kalimantan and Jambi Province (Sumatra). Subnational REDD+ institutions have been developed in 11 provinces and are in development in 23 other provinces. There is also planning at the national level.

Indonesia’s more than 120 million hectares (ha) of forestland make it the country with the third largest area of tropical forest worldwide. Its forests are home to 10

percent of the species found globally. Forest sector output comprises about one percent of total GDP. Forest management faces many challenges, with conflicts between forest occupants and demand from competing land uses (and users) – e.g., plantation agriculture, industrial forest plantations, mining, and urban sectors – at their core. Despite major commitments by Governments to reform elements of the forest sector driving forest loss and degradation, the ongoing and unresolved conflicts and issues evinced by high deforestation rates (~ 0.6 million ha per year) and widespread forest fires raise questions on the sustainability of rural economic development and the potential for Indonesia to achieve its climate change goals.

Indonesia’s complex land tenure history has left a situation in which overlapping state and village land claims are a generalized feature across the country. There exists a “public-private” divide that is built into law and institutional mandates. This refers to the country’s two distinct land administration systems: one for public land, which is primarily forest lands that fall under the Forest Law of 1999, and the other for private land. This divide has resulted in the creation of overlapping categories of land administration enshrined in the legal framework which do not correspond to either the actual or the historical facts of occupation and use. All lands in Indonesia fall into one

of the two domains defined by law. The first domain is the forest zone (*kawasan hutan*), covering around 70 percent of the land mass, under the administration of the MoEF. The second domain is the non-forest area also known as the “area for other purposes” (*Areal Penggunaan Lain*, APL) under the administration of the National Land Agency which has no mandate whatsoever within forest areas. APL lands include both state and private lands, with the latter comprising around 30 percent of the formally titled non-forest lands. This functional separation of land administration between two different government agencies leads to some inevitable complications, and while the persistence of dual systems for forestry and non-forestry lands does not specifically affect REDD+-related goals, it does create substantial challenges for IP and LCs. APL covers an area of about 64 million ha, or about one-third of the landmass of Indonesia, and like the forest zone, a portion of state lands under the APL category is also *de facto* used by local people.<sup>6</sup>

In this “public-private” divide of widespread overlapping state and village areas, the state forestry agency perceives a situation in which villages are “inside” state forest land. For their part, village communities perceive a situation in which state forest lands are “inside” villages. Around 32,000 villages are located within and around forest zones,<sup>7</sup> which roughly represents 36 percent of all villages in Indonesia.<sup>8</sup> The Alliance of Indigenous Peoples of the Archipelago (AMAN), a national NGO, estimates that 86 million ha of forest are covered by these village areas. AMAN has identified some 40 million ha that they report as being eligible for recognition as areas of customary use. The lack of formal recognition of these lands has allowed the MoEF, to make functional allocations of these forest zones for development as production forests managed by extractive industries or as conservation forests to be managed as national parks. This deprives the inhabitants of the associated villages of access and use, creating a variety of problems for inhabitants’ lives and livelihoods and socio-ecological and gender injustices.<sup>9</sup>

Because of historical occupation and land use, in the vast majority of cases these villages’ traditional land rights are well-established as “facts on the ground,” yet they are the subject of ongoing debates about their legal recognition. Some Constitutional protections for village collective for-

est land, under principles of customary (*adat*) tenure, were recognized by the Constitutional Court in a group of findings in 2013 that unequivocally concluded that “*customary forest is a forest located in Indigenous Peoples area... [State forest] does not include customary forest... and customary forest is stipulated insofar the Indigenous Peoples concerned remain in existence and their existence is acknowledged.*”<sup>10</sup> This ruling raised *adat* Forest to the level of private forest, according to a recent analysis by the Forest People’s Programme.<sup>11</sup> Although these court findings were viewed by many as a breakthrough for Indigenous communities’ forest tenure, the reality in the ensuing period has been one of limited legal recognition.

Part of the lack of progress in the recognition of community tenure stems from problems with the legal interpretation and application of *adat* tenure. The legal interpretation and application of *adat* tenure itself is a topic of historical and anthropological debate. The criteria for legally establishing and registering an *adat* community are outdated. Many communities have evolved over time and blended historically traditional lifeways and land use practices with more recent cultural trends and technologies. This evolution of community identity and land use practices is best understood as an evolution of *adat* rights, which calls for a corresponding updating of the criteria and definitions for recognition of customary tenure. Some groups (particularly in central Government ministries), however, have chosen to interpret these developments in communities as evolutions **away from** *adat* tenure, implying the need for greater recognition of individual tenure and the de-legitimation of community claims.

For these reasons, coupled with incomplete decentralization and strong vested interests in maintenance of the status quo, the strategy of using the *adat* tenure designations directly for recognition of collective village lands has faced difficulties in practice, with a relatively small number of recognitions achieved since the 2013 rulings. The complex procedures required to register and recognize an *adat* community under outdated criteria from the early part of the 20<sup>th</sup> century (often requiring significant outside organizational and legal support,) the reluctance of local governments to pass local regulations on the recognition of *adat* communities without better central government guidance, and the failure to date of Governments to pass any comprehensive legislation on *adat* lands or the Land

Law, have resulted in a type of stalemate on IP and LC forest and land rights recognition. Scattered progress has been made by several specific projects and initiatives but this progress is being made amidst continuing losses of IP and LC lands and land rights, and conflicts with large-scale, commercial agriculture and forestry concerns that continue to expand their plantations at the expense of forests and customary rights awaiting “acknowledgement.”

Consequently, tenurial conflicts are widespread and finding ways to mitigate such challenges is key to advancing collective rights in the country. In 2018, 450 agrarian conflicts were reported involving 1.27 million ha affecting 86,745 households. In 2019, the number of recorded agrarian conflicts increased by almost 50 percent, to 666, and the number of affected households more than doubled to 176,132. The disputed land area in 2019 was 1.46 million ha. The costs inflicted by the community and commercial plantations conflicts has been estimated at 14.7 trillion Rupiah per year,<sup>12</sup> and government expenditures to resolve agrarian conflicts from investigations alone amounted to 488 billion Rupiah per year.<sup>13</sup> Communities involved in these land disputes often experience multiple forms of loss, including displacement, intimidation, violence, and takeover of traditional Indigenous forests and lands. Conflicts result from an array of factors that ultimately derive from the dual system of overlapping rights: lack of legal certainty in the recognition of Indigenous territories; lack of standard law enforcement guidelines for handling natural resource conflicts; and a central government development agenda that has traditionally reflected a strong bias towards protecting corporate interests over community rights. A Directorate for Managing Conflict, Tenure and Customary Forest (PKTHA) has been established to handle tenure conflicts through mediation but the scope of its effectiveness is not yet clear.

Despite these difficulties and complexities, administrative changes and the 2013 court ruling have created significant windows of opportunity for advancing the formal recognition of IP and LC tenure. A substantial push to map community forests and village boundaries has emerged in the last five years allowing for the documentation of IP and LC tenure on the ground. By prompting negotiations and identifying creative solutions between local communities and the agricultural sector, this map-

ping exercise has become the basis for the legal recognition of contested community lands.

Despite limited government attempts to advance the legal recognition of IP and LC-occupied lands, NGOs have taken up several significant initiatives to address this shortfall, demonstrating the feasibility and effectiveness of transformative action from the bottom-up. Among the largest have been:

- » The Indonesian Community Mapping Network (Jaringan Kerja Pemetaan Partisipatif, JKPP), which assists with participatory mapping and sustainable land use planning in IP and LCs’ village lands. As of August 2020, they have helped map about 12.3 million ha of land for regularization under the (non-forest) Land for Agrarian Reform Program, the Social Forestry Initiative, and as customary forest land (Hutan Adat). Of these, however, only 100,000 ha are reported as having been formally recognized by the national government. As expected, community mapping revealed many overlapping permits from multiple agencies, demonstrating the critical need for conflict resolution.
- » The Alliance of Indigenous Peoples of the Archipelago (*Aliansi Masyarakat Adat Nusantara, AMAN*) is working in partnership with the Agrarian Renewal Consortium (KPA) and the Indigenous Territory Registration Body (BRWA)<sup>14</sup> to map *adat* land claims. Currently, 11.2 million ha of *adat* land claims have been mapped and submitted to the Geospatial Agency for consideration in the government’s One Map Program (see below). There is some degree of overlap between the JKPP and the BRWA databases, however the extent of that is unclear.<sup>15</sup>

The overall pace of progress, however, remains slow. Since the 2013 Constitutional Court ruling, only 57,000 ha have been formally recognized as *adat* forest areas by the Government of Indonesia.<sup>16</sup> As of December 2019, a total of 0.96 million ha had either been declared as *adat* forest areas or as an “*Indicative Area of Adat Forest*.”<sup>17</sup> The latter category, which comprises areas claimed by communities that still must undergo technical reviews and verification by the government, represents 95 percent of the total, or 0.91 million ha. Additionally, another 1.65 million ha of forest is

located in or around current conservation areas for which the government has received 134 proposals requesting their designation as *adat* territory (*Wilayah Adat*). If approved, this designation would benefit approximately 6,380 villages. In between the 0.96 million ha currently identified by the MoEF as *adat* forest areas or as an “*Indicative Area of Adat Forest*” and the 40 million ha that AMAN maintains is closer to the actual area eligible for designation as *adat* territory, lies a very large gulf, and a large opportunity.

Community forest management has been another entry point for the recognition of IP and LC-occupied forest land. In 2014, the government adopted an ambitious target to allocate a minimum of 12.7 million ha of forest land to marginalized communities under the Social Forestry Initiative.<sup>18</sup> The initiative aims to halt deforestation and resolve land tenure conflicts by granting forest management licenses to communities. Giving community associations and enterprises forest concessions is a way to put forest management under community control and obtain benefits. However, similar to *adat* forest recognition, implementation is slow, with only about one-third (4.1 million ha) of the minimum target having been met by May 2020.<sup>19</sup>

Another promising and highly ambitious initiative is the central government’s approach to resolving the problem of overlapping claims called the One Map Program. The One Map Program seeks to integrate geospatial information across all domains and sources including both concessions and village boundaries. High expectations have surrounded the One Map Program as a tool for overcoming both the lack of clear boundaries and the lack of recognition of IP and LC rights. However, the One Map Program has become more of a tool for aggregating data and locating claims as opposed to a program for resolving competing interests and making positive recognition of IP and LC-occupied lands. Even the basic compilation of land claimants and consolidation of many land-use maps has taken a long time.

The One Map Program is also facing criticism in the press<sup>20</sup> and from several national organizations who work on issues of IP and LC rights and the resolution of land conflicts. Most notably, the data is not open access, which they argue is necessary for building trust, especially since it is supposed to be an instrument for resolving overlapping land claims. As noted by one critic, “*Public access as the foundation of trans-*

*parency is key in gaining the trust of the stakeholders, including those in dispute, to reach an agreement.*”<sup>21</sup> A second concern is that the geospatial data derives only from government sources, and so excludes IP and LCs and their related land claims. Similarly, the status of the BRWA data given to the One Map Program and accompanying process is unknown – data that represents millions of ha of *adat* land claims.

In late 2020, the Government of Indonesia passed the Omnibus Law on Job Creation despite strong opposition from peasant, Indigenous, and environmental organizations, labor unions, and student movements. The new Omnibus Law makes it easier for commercial forest and agricultural operations to obtain forest land concessions and receive operating licenses. IP and LC groups and their allies fear this law is a further setback for IP and LC tenure recognition and will negatively impact environmental issues and agrarian reforms. Concerns about the law have also been echoed in the international press<sup>22</sup> regarding its negative repercussions on the autonomy of provincial, district and city governments and communities’ ability to have a voice in the issuance of environmental permits, ultimately making it easier for commercial or industrial interests - such as logging and coal-mining - to gain access to valuable lands and resources.

The media review carried out for this report<sup>23</sup> confirmed that land and tenure-related issues and conflicts have a high profile. In both state- and privately-owned media (including local and independent sources,) the government’s agrarian reforms and social forestry efforts were heavily featured. In over half of the articles reviewed, the focus was on conflicts between IP and LCs, private companies and the military. Hotspots included Central Kalimantan, East Nusa Tenggara, Papua, and Aceh. The causes of these conflicts varied but mostly involved overlapping or contested tenure rights. Amongst the coverage was the Indonesian National Commission on Human Rights’ report confirming that the majority of human rights violations in Indonesia have been related to agrarian conflicts.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE

While progress on the recognition of collective forest tenure remains slow, elements of significant political will to



address the problems of the forest sector are emerging for the first time in decades, and a wide set of opportunities are present. This political will is evidenced by such developments as the Presidential Instruction 86/2018 to accelerate the re-allocation of land to the poor, the Presidential Instruction 5/2019 for the permanent ban on licenses in primary forests and peatlands, Government Regulation 45/2017 for peoples' participation in regional governance, and MoEF's Social Forestry (*Perhutanan Sosial*) scheme whose goal is to provide use rights to at least 12.7 million ha of forest lands. There are also numerous experiences and developments in recent years that make the case for focusing on subnational jurisdictions as perhaps the most strategic scale for advancing the recognition of IP and LC customary and collective rights to forest and non-forest lands while resolving long-standing conflicts over rights to forest land.<sup>24</sup>

There are opportunities to continue to support the development of progressive legislation for rights advancement at the central level. For example, updating the Land Law and modernizing concepts and definitions of *adat* and communal land tenure could have significant impacts. Progressive modification of the Agrarian Reform Law could also bring the MoEF into a co-executing role. While these legislative projects have been thwarted in previous periods, they show that there are potential opportunities within the evolving political economy constellation to achieve success with specific legislative formulations. Given that the WB's 2015-2020 Country Partnership Strategy is likely in the process of being updated, and that the need to find paths for resolving IP and LC land and forest tenure issues across the WB's rural sector engagements (Program to Accelerate Agrarian Reform, East Kalimantan Project for ER Results, and J-SLMP), has the potential for inclusion in the WB's policy dialogue around the new Country Partnership Strategy and seems like a natural next step.

Other relevant topics for inclusion in the WB's high-level policy dialogues with the Government of Indonesia include:

- » Economic, environmental, and societal costs of conflicts over land. This would include their impacts on private investment and growth due to uncertainty when doing business in Indonesia where land and natural resources issues are a concern,

whether directly or indirectly, such as reputational risk in supply chains. Further analytical activities could be considered for a study on the scope, scale, and magnitude of costs.

- » The One Map Program – governance, data transparency, appropriate access by public and affected peoples, data sourcing and protocols for incorporation of JKPP and BRWA mapping inputs, especially to ensure their consideration in the resolution of conflicts and overlaps.)

In terms of implementation opportunities for advancing rights, Indonesia offers a full range of legal options – with varying advantages, disadvantages, and tradeoffs – for the recognition of *adat* tenure rights in forest and non-forest lands. Annex I presents a recent analysis of the range of options and their strengths and weaknesses for providing tenure security for *adat* communities.<sup>25</sup> Taking the WB's recently initiated East Kalimantan Project for ER Results as an example, the BWRA map<sup>26</sup> shows 12 communities, claiming some 240,000 ha in East Kalimantan. Yet in the project documentation, it is estimated that 1 million ha in East Kalimantan are managed by customary communities. In recognition of the risks this poses, the project's Indigenous Peoples' Plan proposes a mitigation strategy that includes screening of existing claims to land and natural resources, and support to Indigenous Peoples who wish to seek formal recognition of customary rights. This is a situation that repeats throughout Indonesia and affects a wide range of investment projects and programs in the rural space. This presents an opportunity in East Kalimantan for securing a systematic approach – perhaps in close collaboration with the WB-financed Jambi Sustainable Landscape Management Project (J-SLMP)<sup>27</sup> – to avoid and resolve potential land and natural resources conflicts in a fashion that tangibly advances IP and LC collective rights by obtaining their free, prior and informed consent (FPIC) as well as the jurisdiction of local and provincial governments. First, the pre-screening is essential to the FPIC process in order to have a prior inventory of communities that are making or hoping to make *adat* claims, as these are communities for whom the FPIC process will be different. It is in the next steps where potential opportunities lie.

The most common phrase found in all sources reviewed for this report was “*but progress is slow*” in reference to the

pace of implementation of the regularization of non-forest and forest lands, especially in the resolution of *adat* lands. The regulations and instruments are in place, but the technical, administrative, and institutional frameworks largely remain to be operationally defined, put in place, effectively rolled out, and systematically implemented. East Kalimantan is extremely well-placed to serve as a platform for accelerating processes for the recognition of *adat* land and forest rights by regional governments such as district heads, city mayors, or provincial governors. Through its 12+ years of engagement in jurisdictional approaches, it has developed both provincial and district-level controls over land-use change and it has put in place a Green Growth Compact that encompasses prototype initiatives for forest conservation, social forestry, reducing carbon emissions, promoting sustainable agriculture, and institutional strengthening. The Green Growth Compact and other effective innovations were systematically mainstreamed into government policies, plans, and practices at both the provincial (e.g., provincial regulation on adaptation and mitigation of climate change in 2018) and district level. (e.g., Berau District's village-level planning and community forestry initiative, SIGAP). In addition, it established a Provincial Council on Climate Change (*Dewan Daerah Perubahan Iklim*, or DDPI) that has evolved into a multistakeholder forum to coordinate program activities. These, and others (e.g., Berau District Forest Carbon Program) have allowed for interlinked jurisdictional initiatives that serve as the loci for promoting and coordinating multiple land-use interventions from the level of individual villages and concessions to implementation of national and international programs.<sup>28</sup> It is not a coincidence that East Kalimantan was selected as the pilot province for a results-based payment agreement with the FCPF.

Bottlenecks for the systematic implementation of collective tenure rights are technical and institutional, and include: (i) the complex procedures required to register and recognize *adat* communities, often requiring significant outside organizational and legal support; (ii) the dual systems for forestry and non-forestry lands, and the lack of coordination between the agricultural and forest sectors; (iii) the reluctance of local governments to pass *ad hoc* local regulations on the recognition of *adat* communities, in the absence of adequate central government guidance; (iv) the cost of collecting requisite spatial and legal data;

(v) the lack of clear institutional and implementation frameworks to clarify bureaucratic and administrative roles, responsibilities, and accountabilities for outcomes; and (vi) the lack of budget to support more than meetings and capacity building. For some of these bottlenecks there are lessons and experiences that can be drawn upon. For example, in recent years, AMAN facilitated the promulgation of local regulations (*Peraturan Daerah*) to provide the basis for recognizing Indigenous customary rights in dozens of districts across Indonesia. The JKPP and BWRA experiences with mapping are another such experience which shows how progress can be achieved. Still, there are others that require further development on the process and technical side (e.g., conflict management, boundary harmonization, local capacities, and technologies such as drone mapping), for which a facility or funding window for learning and innovation in fit-for-purpose solutions might be supported as a means of achieving progress and mobilizing solutions across the diverse range of conditions and contexts. Learning from the WB-financed Program to Accelerate Agrarian Reform (One Map Program), including fit-for-purpose mapping of parcels in non-forest areas, land use, indicative village administrative boundaries, and other land use situations (e.g., concessions) could also be capitalized upon.

To develop and implement a province-wide program over the next few years, a new institutional framework would likely be required to coordinate multi-stakeholder cross-sectoral responses. To coordinate between the agriculture and forestry sectors effectively, for instance, would require the involvement of the office of the provincial executive in order to ensure effective engagement and responsive agencies. The institutional infrastructure built for jurisdictional REDD+ should provide the necessary foundation for the type of institutional framework that would be required. It would also be critical to ensure linkages between the mapping efforts and the One Map Program.

In terms of strengthening and consolidating collective tenure, there is a large opportunity to scale participatory planning and mapping approaches that could address capacity gaps while enhancing rights recognition and local decision-making. One clear entry point for the recognition of IP and LC forest lands is through administrative and

land use planning requirements, under the Ministry of Home Affairs, for village boundary setting and resource mapping (VBS/RM). Every one of the country's 75,000 villages is supposed to have boundaries mapped and included in regional land use plans and the One Map Program. Prior to VBS/RM, it was difficult for governmental jurisdictions to determine when they were implementing development projects and when they were providing public services. With VBS/RM, however, districts have up-to-date, accurate and community-accepted geospatial data and officially recognized village maps that can be used to update district spatial plans (land use plans), making the work of local village empowerment agencies easier, more transparent and accountable as it allows linking funding allocations from the national government to villages with geographically referenced boundaries.

Beyond its value for government, VBS/RM has provided benefits to villagers, including: (i) clarity on official jurisdiction and elected representation; (ii) resolution of historical land use and ownership disputes; (iii) better understanding on where to apply for land use and natural resource licenses and permits; (iv) official acceptance of local toponymy; and (v) geographic referencing and accurate mapping of natural and cultural resource features that can support the recognition of collectively held forests on *adat* tenure bases, the application for community forest licenses, or even the creation of relatively new and untested tenure categories like communal management. Participatory planning approaches like VBS/RM create an opportunity to expand the recognition of community forest tenure and land use as undeniable "facts on

the ground" and thus enable a continuum of tenure protections and recognition which resolve the public-private land administration divide village by village. This kind of participatory and socially licensed mapping may also create feedback loops which upset the status quo in ministerial authority and interrupt unofficial benefit flows.

Participatory mapping and land use planning at local levels also create opportunities for learning and advocacy, which could subsequently help create a "bottom-up" base of knowledge and experience about the nature of collective rights and channel demands for recognition through local authorities. Learning and advocacy creates opportunities to increase awareness of women's rights, address barriers to inclusion and decision-making, strengthen women's rights to land and resources, and strengthen implementation of women's rights in law.

Opportunities to leverage benefits from rights are widespread in the form of forest concessions licensed to communities and the potential to leverage greater local participation in community co-management of private sector activities. Many actors in the international private sector are becoming more cognizant of the monetary and reputational risks of land and resource tenure conflict, and companies are signing on to binding commitments to verify their social and environmental impacts. Concessionaires in private and state forest areas are actively asking governments for enabling regulations for co-management with local communities. This creates opportunities for communities to leverage recognition and benefit from co-management arrangements.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments and actions	Key stakeholders	Scale of investments	Location of investments	Timeframe of investments
Support progressive legislation to clarify collective forest tenure rights	<ul style="list-style-type: none"> <li>» Support legislation on updated and clarified definitions of community forest rights.</li> <li>» Support updating the Land Law to expand scope of agrarian reforms and community land recognition in forest domains.</li> <li>» Organize high-level policy dialogues and analyses through the WB's Country Partnership Strategy.</li> </ul>	Central Government Ministries, CSOs and NGOs (AMAN, KPA)	Small	National	Short to medium-term
Support land administration and institutional governance	<ul style="list-style-type: none"> <li>» Improve land administration at the sub-provincial (<i>Kabupaten</i>) level.</li> <li>» Strengthen local government capacity and sustainable development planning at the village level through VBS/RM and community mapping exercises.</li> <li>» Forest zones should have strong institutions that have coordinating power to implement projects from the beginning (e.g., at the provincial level with national coordination), including concessions and licenses for communities.</li> <li>» Creation of a fit-for-purpose learning and innovation fund for enhancing efficiency and scaling up recognition of IP and LC land and forest rights and local land use planning.</li> <li>» New institutional arrangements for enhancing efficiency and scaling up recognition of IP and LC land and forest rights.</li> </ul>	Sub-provincial ( <i>Kabupaten</i> ) governments, village governance bodies, CSOs, and NGOs	National Large Provincial Small to medium	National Provincial	National Long-term Provincial Short to medium-term
Support access to land information	<ul style="list-style-type: none"> <li>» Build transparency around land use by supporting public information legislation and platforms like the One Map Project.</li> <li>» Support FPIC processes in administrative land use decision-making at all levels.</li> <li>» Make accessible zoning permits to people who have phones.</li> </ul>	Donors, National and local governments, CSOs, and communities	Medium to large	National	Long-term
Expand IP and LC rights and land use planning	<ul style="list-style-type: none"> <li>» Systematically identify Indigenous Peoples within protected forest and conservation areas.</li> <li>» Accelerate recognition of <i>adat</i> land rights claims, including participatory mapping and demarcation of customary territories.</li> <li>» Support participatory village boundary mapping such as the delimitation and demarcation of territory, especially in and around commercial concessions.</li> <li>» Support IP and LC participatory land use planning, including visioning for long-term land use management and the development of needed sub-plans for forest rehabilitation, village conservation areas, and where relevant, livelihood displacement mitigation.</li> </ul>	Government staff and officials, CSOs, communities, Customary leadership	Large	National	Long-term

Opportunity	Specific investments and actions	Key stakeholders	Scale of investments	Location of investments	Timeframe of investments
Strengthen conflict resolution mechanisms	» Strengthen both informal and formal conflict resolution mechanisms, especially between <i>adat</i> communities and concessions.	Judiciary and formal courts, customary courts and dispute resolution mechanisms, Customary leadership, and the private sector	Moderate	National	Long-term
Livelihoods and social forestry program support	» Address deforestation linked to encroachment and agriculture by providing alternative livelihood opportunities and supporting the government's social forestry and village development programs.	Social forestry programs and government representatives, CSOs, and communities,	Moderate	National	Medium-term
Advance women's rights	» Increase awareness of women's rights, address barriers to inclusion and decision-making, strengthen women's rights to land and resources, and strengthen implementation of women's rights in law.	Women, policymakers, government representatives, national media, and CSOs	Moderate	National	Long-term
Support budgets that go directly to IP and LC	» AMAN and other NGOs advocate for district and subdistrict budget and funding allocations, but even these are not reaching IP and LCs in Indonesia. » Funds should directly support IP and LCs.	IP and LCs, government representatives, and policymakers	Moderate	Regional	Medium-term
Study the amount of money Indonesia spends on agrarian land conflicts	» WB and FCPF leverage their connections with the Ministry of Economics in Indonesia. » Make an economic case for institutional capacity building. » Could bolster support to clarify overlapping claims.	Ministry of Economics and the WB	Small	National	Short-term

## STATUS OF LAND AND FOREST RIGHTS<sup>29,30</sup>

Key Element of Tenure Security	Country Findings	Opportunities for Policy, Action and Investment
1. Legal frameworks for tenure rights	A strong and inclusive national framework currently exists to include the recognition of customary tenure and communal rights to forest and forest resources, particularly after a 2013 Constitutional Court ruling determined that ownership of Indigenous community forests should be in the hands of customary peoples. However, the ability to implement this framework is hindered by the divide in land administration jurisdiction between forest and non-forest areas and a lack of comprehensive legislation on <i>adat</i> lands. Gender-sensitive protections do not exist for community-based tenure regime-specific, community-level indicators (i.e., membership, inheritance, voting, leadership, and dispute resolution). <sup>31</sup>	Further comprehensive legislation on <i>adat</i> lands or the Land Law Advance women's rights which is not explicitly mentioned in legal text

Key Element of Tenure Security	Country Findings	Opportunities for Policy, Action and Investment
2. Implementation of legal recognition.	The implementation of very progressive laws on paper has not been realized due to overlapping roles of government institutions, competing tenure claims, and cumbersome bureaucratic processes to devolve customary land back in the hands of IP and LCs.	Support land administration and institutional governance Expand IP and LC rights and land use planning Advance women's rights
3. Appropriate regulations for land and resource management	After the 2013 ruling by the Indonesian Constitutional Court to return state-held land back to communities, the process of obtaining permits or rights is easier for some but virtually impossible for others. To obtain legal status, which is a pre-condition for claiming any right, customary communities must go through a long and highly political legislative process, requiring the issuance of a Regional Regulation or Regent Decree to assert their existence. Meanwhile, companies only need a standard administrative registration to be legally recognized and once granted, the permits for companies last much longer. On paper, all permit processes are free of charge. In practice, there is evidence of unofficial fees or bribes with hidden costs reaching as high as US\$600 per ha for an oil palm plantation, as revealed in one corruption case brought to court. <sup>32</sup>	Updating and simplifying of regulations to recognize customary communities
4. Effective support from responsible government agencies	There is a high political and social will to decentralize, but institutions have failed so far to deliver community support in a timely manner. Many institutions have been created but have been slow to deliver their aims, failed to deliver their aims altogether, or have overlapping or contradictory responsibilities.	Support land administration and institutional governance Livelihoods and social forestry program support Advance women's rights
5. Empowered and inclusive Indigenous and community governance	Customary occupants should hold much more land according to the 2013 court ruling. However, the implementation of the ruling has been slow and the cumbersome bureaucratic processes have led to NGOs having to step in to help communal land recognition.	Expand IP and LC rights and land use planning Livelihoods and social forestry program support Advance women's rights
6. Systems for recording community forest tenure rights	The One Map Project is providing a lot of hope in overcoming the lack of clear boundaries and the lack of recognition of local rights. However, there are different land claimants and consolidating many land-use maps has taken a long time.	Support access to land information
7. Enforcement of tenure rights	The MoEF has primary responsibility for forest law enforcement. Weaknesses in the administration of forest area facilitate illegal land uses and overlogging. Poor land governance and resulting overlapping land claims can in part be attributed to lack of clarity in the underlying legal framework, to a lack of accurate data and information, and to a lack of coordinated sectoral development plans.	Clarification of overlapping claims (drawing on national programs like One Map) and sub-national processes of village boundary mapping and planning Strengthen MoEF capabilities
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Indonesia Law No. 32/2009 on the Environmental Protection and Management and Law No. 26/2007 serve as the primary regulatory frameworks in the environmental management which governs which communities' engagement and complaint-handling mechanisms as well as sanctions for in compliance are stipulated. A 2017 comparative study commissioned by RRI found that discriminatory government treatment has led to a large gap between forest areas controlled by business entities versus areas managed by communities in Indonesia. Over 90 percent of the forest allocations researched in this study are for companies, while only 7 percent are granted to communities.	Support access to land information with guidelines for transparent public access to information on tenure, permits and claims

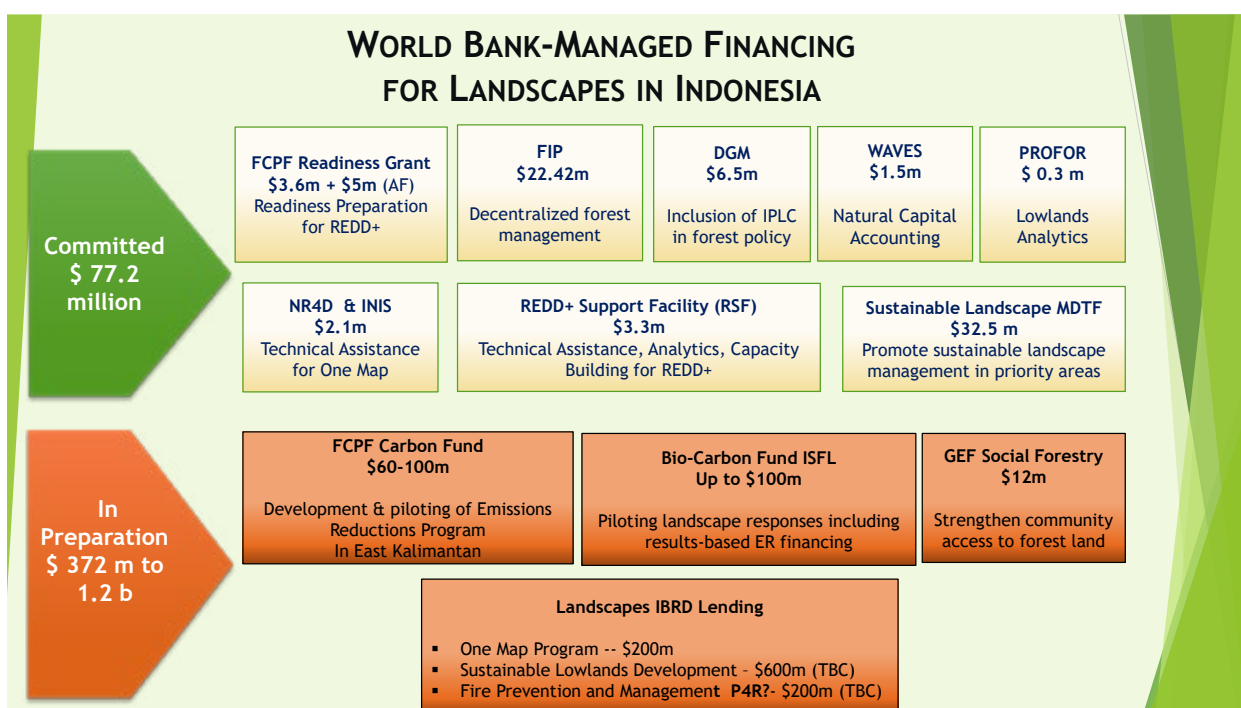


Key Element of Tenure Security	Country Findings	Opportunities for Policy, Action and Investment
9. Conflict and dispute resolution	On national and subnational management of conflicts, there are still a variety of regulations in place. These regulations are sometimes overlapping, or even contradictory, as are the institutional functions and responsibilities. The dispossession and exclusion of Indigenous Peoples from their own customary territories has led to an increasing number of conflicts. Communities involved in these land disputes experience numerous abuses, including: displacement, intimidation, violence, and takeover of traditional Indigenous forests. Conflicts result from an array of factors: lack of legal certainty in recognition of Indigenous territories; lack of standard police guidelines in handling natural resource conflict; and a state development agenda that is strongly biased toward protecting corporations over community rights. The Directorate for Managing Conflict, Tenure and Customary Forest (PKTHA) has been established within it to handle tenure conflicts through mediation. The mediation process involves the following stages: desk research, assessment, pre-mediation, mediation, and the drafting and signing of a Memorandum of Understanding between parties.	Strengthen conflict resolution mechanisms with standard police guidelines and expansion of mediation

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>33</sup>

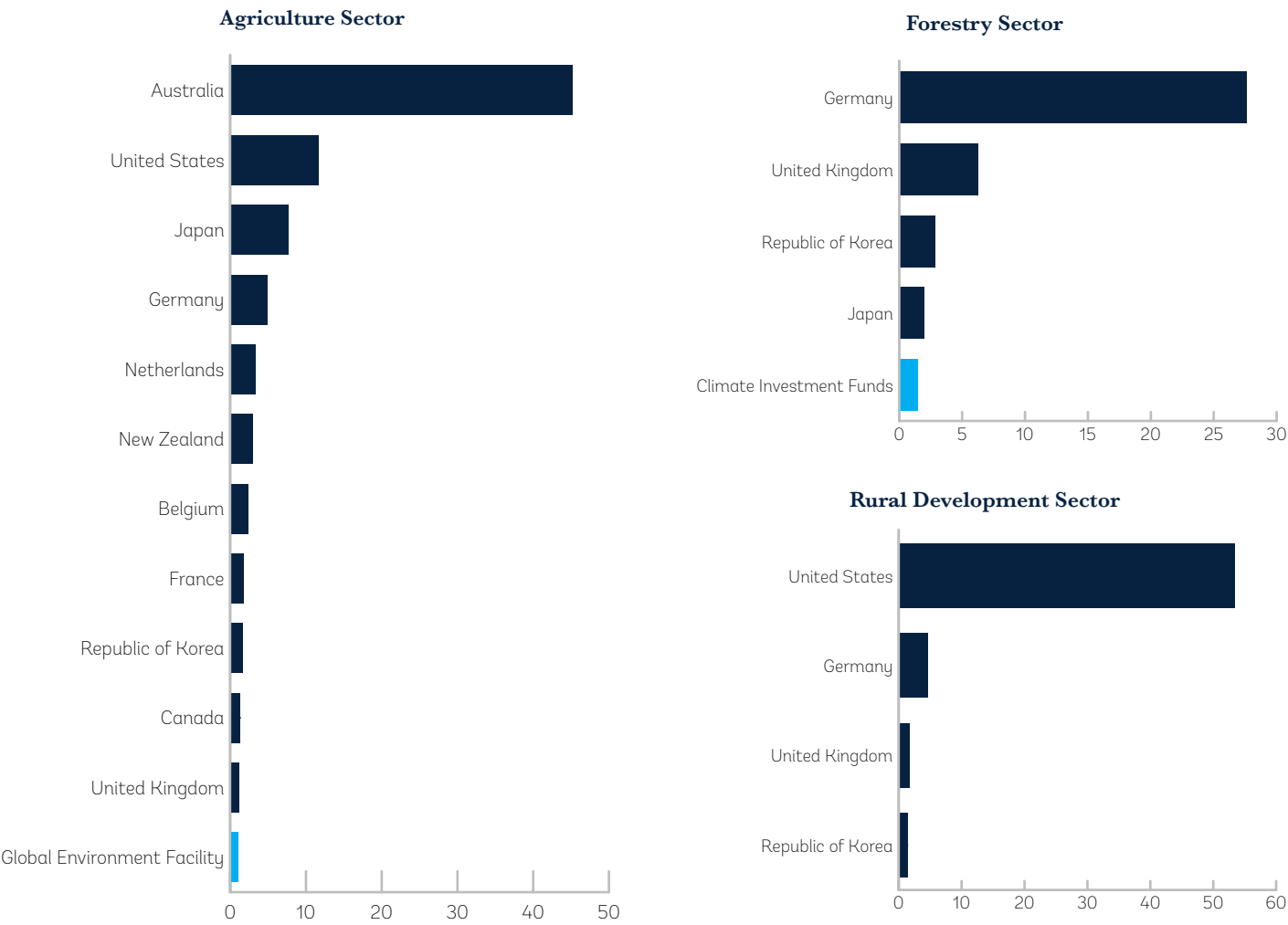
Project Name	Location	Financier	Budget (millions, US\$)	Duration
East Kalimantan Project for ER Results	East Kalimantan	WB	110	2020-NA
Program to Accelerate Agrarian Reform (One Map Project)	National	WB	200	2018-2023
Jambi Sustainable Landscape Management	National	WB	13.5	2020-NA
Strengthening of Social Forestry in Indonesia	National	WB-GEF	14.3	05/2020-06/2025

## WORLD BANK-MANAGED FINANCING FOR LANDSCAPES IN INDONESIA



Source: <https://www.forestcarbonpartnership.org/system/files/documents/2f.%20WB%20TTL%20presentation%20Indonesia-Rpackage-2017Sep.pdf>

# OFFICIAL DEVELOPMENT ASSISTANCE (ODA): OVERVIEW OF SECTORAL DISBURSEMENTS TO INDONESIA



*Note:* Values in millions, US\$ disbursements by multilateral agencies and donor countries.

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area/Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project or program mitigation
Government trend of favoring corporations over IP and LC customary rights	National	As the Government of Indonesia pushes to map the entirety of the country, there have been many court cases demonstrating that the government favors corporate claims over IP and LCs. In many cases, the bureaucratic process is also streamlined for corporations to gain access more rapidly.	Moderate	Moderate
Large disputes between CSOs and the governments over jurisdiction	National	There is a large problem with unclear status of land ownership, lack of clear demarcation of state forest land boundaries, lack of recognition of customary and local rights to land, and lack of ownership at the local level. This has led to conflict between different land claimants, and underinvestment in long-term sustainable land uses. AMAN estimates that 86 million ha of land should be in the control of customary peoples, a figure that the Government of Indonesia contests.	Low	Moderate
Lack of high-level political will	National	High-level government institutional actors in the forest sector lack political will to resolve tensions between IP and LCs, sectoral interests, and concessionaires to advance IP and LC rights and recognition.	High	Low
2020 Omnibus Law	National	The recently passed Omnibus Law calls into question the national willingness to advance IP and LC tenure security with several articles of the Law potentially weakening Indigenous Peoples' rights and environmental regulations.	High	Low
Increase in conflicts hardens positions	National	Increasing conflicts over land and resources between Indigenous Peoples, governments, and palm oil and forestry companies may heighten tensions and challenges associated with cooperation and land use planning.	High	Moderate

## STRENGTHS AND WEAKNESSES OF ADAT TENURE OPTIONS<sup>34</sup>

Bureaucratic Requirements/						
Tenure Option	Administration of the Acquisition of Rights	Authority	Legal Persona	Implementability	Enforceability	Benefit
Ownership Right ( <i>Hak Milik</i> )	Official statement of ownership right requires the signature of the village, sub-district <i>adat</i> head and head of district (strength) Application for registration must be submitted to the central or regional office of the National Land Agency to become land based on rights. The maximum provision is 2 ha (agriculture) or 2,000m2 (non-agriculture) if it is determined by the central National Land Agency office, and the maximum provision of 5 ha (agriculture) or 5,000m2 (non agriculture) if it is determined by the regional National Land Agency office (weakness) The period of time needed to get a certificate is 60 working days. For those who are coming from forests areas, it may take a longer time because they have to go through the process of releasing and changing the boundaries of the forests area (weakness)	Authority to use, manage, and alienate lands (to lease or use as collateral) (strength) Unlimited duration (strength) Does not provide a public authority for rights holders (weakness)	Rights holders are both an individual or communal. However, this option is not allowed for a group of legal subjects (weakness)	The regulations have already regulated the administration of the rights (strength)	Official Statement of Right ( <i>Surat Bukti Hak</i> ) is only recognized as a preliminary proof. Several state, government, and private institutions do not recognize it as a proof of ownership (weakness) Official Statement ( <i>Surat Bukti Hak</i> ) is sufficient for the purpose of rights conversion, registration, land acquisition, transfer of rights, and court accepted proof of ownership (strength)	Can be used to support livelihoods and to secure financing (use as collateral) (strength) Common Ownership Right can be a binding force for a social life (strength)
Right of Avail ( <i>Beschikkingrecht- Hak Ulayat</i> )	1.Requires multilevel approval: regional government (for recognition of <i>adat</i> community and their Right of Avail) and Agrarian and Spatial Planning / National Land Agency (for administration) - (weakness) 2.No provision regarding the length of time required to determine the existence and administration of <i>adat</i> land (weakness)	Public authority (regulate) and private authority (utilize, use) - (power)	Rights holders are <i>adat</i> community as a group (strength) Does not specifically accommodate individual tenure rights within the group (weakness)	Requires a head of the region's decision in the initial stages of the recognition of subject and object of rights' existence (weakness). Even though the administration has been arranged, it still requires technical guidance (weakness)	Right of Avail over <i>adat</i> land recorded are still waiting for a registration in the land book (weakness) A recording can be a reason for the government not to issue permits or rights on it without the approval of the holder. <i>Adat</i> communities can also use this recognition to prosecute other parties who exercise control and use of <i>adat</i> land without rights (strength)	Can be a source of livelihood (strength) Can preserve biological diversity if managed through traditional knowledge (strength) Livelihood space to develop a belief and culture system (strength)

Tenure Option	Bureaucratic Requirements/ Administration of the Acquisition of Rights				
	Authority	Legal Persona	Implementability	Enforceability	Benefit
Social Forestry (Perhutanan Sosial)	Rights and permits are granted by the Director General on behalf of the Minister or Governor (weakness)	Accessible by almost all forms of legal personhood, namely individuals, groups (farmers), joint groups, cooperatives, Village-Owned Enterprises ( <i>Badan Usaha Milik Desa (BUMDes)</i> ) (strength)	Clear technical guidelines and implementing instructions in the form of director general regulations (strength)	Guarantees community rights to collect and use forest products (strength)	Communities can make forests as a source of livelihood, to get development support from the government; maintain and develop local wisdom related to forests management (strength)
	Reasonable processing time (average of 15 to 17 working days) for Village Forest Management Right ( <i>Hak Pengelolaan Hutan Desa</i> ), Timber Forests Product Exploitation Permit- Community Forest, and Timber Forests Product Exploitation Permit-People's Plantation Forest (strength)			Exclusion and due process (adjudication) rights in favour of permits and rights holders to prevent third party appropriation (strength).	
	Non-transferrable and cannot be used as collateral (weakness)			Trees in the area of permits and rights can be used as a collateral (strength)	
	In practice, the process of obtaining a community forest can takes up to five years (weakness)				
People's Forest ( <i>Hutan Rakyat</i> )	Requires decree of recognition through regional regulation, validation, and verification activities (weakness)	Legal entities, <i>adat</i> community (strength)	The regulation is already in a form of operational regulation with the existence of a director general regulation (strength)	The government cannot issue permits or rights in <i>adat</i> forest areas without the consent of the owner (strength).	<i>Adat</i> forests may become a source of livelihood (strength)
Adat Forest ( <i>Hutan Adat</i> )	Short processing time with a maximum 29 working days (strength)	Individuals cannot own <i>adat</i> forest		Enforceable exclusion rights (strength)	<i>Adat</i> communities can develop culture related to forests including traditional wisdom (strength)
	In practice, the process of obtaining a decree can take between 4-15 years (weakness).				<i>Adat</i> forests can protect sources of biodiversity
	Submissions from recognized forests areas require more processing time to release and change the boundaries of the forests area (weakness)				

### Bureaucratic Requirements/

Tenure Option	Administration of the Acquisition of Rights	Authority	Legal Persona	Implementability	Enforceability	Benefit
Village-Owned Forest ( <i>Hutan Milik Desa</i> )	A recognition of <i>adat</i> village is done through district and city regulations, and certification of village-owned forests (weakness)	Give a public authority to the holder (strength)	Village (strength) Does not specifically accommodate individual tenure rights within the group (weakness)	Recognition process not yet codified nor made clear and explicit (weakness) Distinction between village-owned forest and village forest ( <i>Hutan Desa</i> ) in the Social Forestry scheme not fully socialized or understood	After the village-owned forest is recorded in the village inventory list and its certificate is issued, the village head on behalf of the village can manage, use and collaborate with external parties regarding the management of village-owned forest (strength)	<i>Adat</i> villages can manage recognized forests as a source of livelihood for the villagers; public services' financing; and biodiversity (strength)
Recognition of <i>Adat</i> Territory, <i>Adat</i> Law, and <i>Adat</i> Institution ( <i>Pengakuan Wilayah Adat, Hukum Adat, dan Lembaga Adat</i> )	Formation of a committee to oversee fulfillment of criteria (weakness) Determined by a regional regulations (weakness) Can be decided by the head of the region (strength)	At the discretion of government officials, this option guarantees communities access to their <i>adat</i> territory, but does not necessarily guarantee ownership rights (strength as well as weakness)	<i>Adat</i> Community (strength)	The regulations regarding the three elements of <i>adat</i> have not connected yet with the regulations on tenure administration (weakness)	Ensures designated rights only, including the use of <i>adat</i> territory for livelihood purposes Legal actions by communities to secure their lands are considered as violation of the law (weakness)	With this discretion, people are allowed to access designated areas to support their livelihood needs (strength).
Agreement between Community and Government/Corporation ( <i>Kesepakatan Masyarakat dengan Pemerintah/Perusa haan</i> )	Agreement as stipulated in the contract (strength) Variable duration and enforceability of case-by-case agreements between the community and the government or corporation (weakness)	Designated use and management rights (strength) Can be leveraged to petition for the recognition of rights (strength) Does not grant full ownership rights (weakness)	Individuals, groups, villages, and <i>adat</i> communities (strength)	Because its legal relationship is a private one, the enforceability of the state's law is limited (weakness)	Public can sue the government or the private sector if there is a violation of the agreement or unlawful actions by the government or the corporation (strength)	Lands and forests are a source of livelihood, and the biodiversity can be maintained (strength)



## ADAT TENURE RECOGNITION INSTRUMENTS AND OPTIONS

Instrument			
Options	Form	Time required to obtain rights and permits	Government Institutions involved
Ownership Right ( <i>Hak Milik</i> )	Decision	Minimum 60 working days (ownership right for religious and social legal entities).	Sub-district and villages (statement of domicile) Minister of Religion and the Minister of Social Affairs (recommendation as a religious and social legal entity) Notary (deed of establishment of legal entity) Ministry of Law and Human Rights (for ratification of religious and social legal entities) Land office or region land office
Right of Avail ( <i>Beschikkingrecht-Hak Ulayat</i> )	Regulation, decree	There is no provision regarding the length of time required for the recognition of the existence and administration of <i>adat</i> land based on the Minister of Agrarian and Spatial Planning or Head of National Land Agency Regulation 18/2019.	Regency land office or provincial land office Regency/Province of Regional People's Representative Council District Head, Major, or Governor
Social Forestry ( <i>Perhutanan Sosial</i> )	Decree	Can be obtained with a relatively short time with an average of 15 to 17 working days for Village Forest Management Right, Forests Product Exploitation Permit on Community Forest ( <i>Izin Usaha Pemanfaatan Hasil Hutan-Hutan Kemasyarakatan (IUPHH-HKm)</i> ), and Forests Product Exploitation Permit on People's Plantation Forest ( <i>Izin Usaha Pemanfaatan Hasil Hutan-Hutan Tanaman Rakyat (IUPHH-HTR)</i> ) (strength)	Head of Village/Sub-district (to approve the list of proposing group names) Directorate General of Social Forestry and Environmental Partnerships (Decree on Social Forestry Rights/Permits Grant) District Head (for recommendations) Corporation (for Forestry Partnership and area release from concessions) Director General on behalf of the Minister or governor (for granting the permits)
People's Forest ( <i>Hutan Rakyat</i> )	Regulation, decree	The length of time to determine the <i>adat</i> forest is 29 working days.	District/Provincial Regional Work Units for initiatives of local regulation on recognition Team for Inventory, Control, Ownership, Use and Utilization of Land District and Regional People's Representative Council (for the recognition of <i>adat</i> community through regional regulations) Ministry of Environment and Forestry (for the release of areas and the recognition of <i>adat</i> and private Forest
Adat Forest ( <i>Hutan Adat</i> )			
Village-Owned Forest ( <i>Hutan Milik Desa</i> )	Regulation, decree	There has not been any village-owned forest established yet.	District and Regional People's Representative Council (for the recognition of village and <i>adat</i> village) Local government for inventory and assessment of village assets Land office for village land registration Ministry of Environment and Forestry for area release
Recognition of Adat Territory, Adat Law, and Adat Institution ( <i>Pengakuan Wilayah Adat, Hukum Adat, dan Lembaga Adat</i> )	Regulation, decree	There is no norm governing the period of acquisition of rights through this scheme.	Inventory, Control, Ownership, Utilization, and Usage of Land (IP4T) Team District and Regional People's Representative Council of Regency/City (for local regulation on the recognition) District Head Decree for the recognition of the Supreme Court Land office (if continued with the <i>ulayat</i> land scheme)

## ADAT TENURE RECOGNITION INSTRUMENTS/OPTIONS AND LEGAL PERSONA

Options of custom tenure recognition	Legal Persona
Ownership Right	Personal, communal
Right of Avail	<i>Adat</i> Community
Social Forestry	<ul style="list-style-type: none"> <li>» Individual: People's Plantation Forest, Forestry Partnership;</li> <li>» Village institution: Village Forest;</li> <li>» Group: Village Forest, Community Forest, People's Plantation Forest, Forests Utilization Permit on Social Forestry;</li> <li>» Cooperatives: Village Forest, Community Forest, People's Plantation Forest; or</li> <li>» Village-Owned Enterprises (<i>Badan Usaha Milik Desa</i> (<i>BUMDes</i>)): Village Forest</li> </ul>
Private Forest/ <i>Adat</i> Forest	Individual, legal entity, <i>adat</i> community
Village-Owned Forest	Village
Recognition of <i>Adat</i> Territory, <i>Adat</i> Law, and <i>Adat</i> Institution	<i>Adat</i> Community
Agreement between Community and Government/Corporation	Group or <i>adat</i> community

## LEGAL PERSONA AND ADAT TENURE RECOGNITION INSTRUMENTS/OPTIONS AND LEGAL PERSONA

Legal entity	Custom tenure recognition options
Individual or collective	Ownership Right, Social Forestry, and Agreement between Community and Government/Corporation
<i>Adat</i> Community	Right of Avail, <i>Adat</i> Forest, and Agreement between Community and Government/Corporation
Legal entity	Social Forestry (Village Forest, Community Forest, People's Plantation Forest) and Village-Owned Forest

## COMPARISON OF PUBLIC AND PRIVATE AUTHORITIES

Public Authorities	Private Authorities
Establish general policies/rules which applies publicly (such as zoning, utilization, and transfer)	Utilize (alone or in collaboration with other parties). This includes utilizing and collecting forests products (timber and non-timber), utilizing forests areas, and utilizing environmental services
Plan and regulate the function, designation, and use of land	Use (plant trees or construct a building)
Distribute and give rights related to land to the members	Lend or lease
Give permission/Right to Use or manage land to the third parties	Transfer through sales and purchase, grants, inheritance, exchange, and equity participation
Obtain income derived from the tenure ( <i>srama</i> and <i>mesit</i> ) - See Land Management Right ( <i>Hak Pengelolaan</i> )	Make it as a collateral with mortgage
Determine and enforce <i>adat</i> law that applies in their territories (including implementing custom-based dispute resolution mechanisms)	Receive restitution and fair compensation if the land is used by another party or for the public interest
The right to determine and develop their own forms of development in accordance with the local needs, culture, and customs	
The right to refuse development that is not in accordance with the local needs and customs	

## TENURE OPTIONS AND AUTHORITY DIMENSIONS

Tenure Options	Private Authority	Public Authority
Ownership Right (communal)	√	–
Right of Avail	√	√
Social Forestry	√	–
People's Forest	√	–
Adat Forest	√	√
Village-Owned Forest	√	√
Recognition of Adat Territory, Adat Law, and Adat Institution	√	√
Agreement	√	√

## VARIATION OF TENURIAL PERIOD BASED ON TENURE OPTIONS

Public Right with an unlimited period	Private Right with an unlimited period	Private Right with a Specific Period /based on Agreement
Right of Avail / <i>Adat</i> Territory	Ownership Right (communal)	Social Forestry
<i>Adat</i> Forest	People's Forest (on land with Ownership Right)	People's Forest (on land with Right to Build ( <i>Hak Guna Bangunan</i> )/Right to Use)
Village-Owned Forest		Forestry Partnership
Recognition of Adat Territory, Adat Law, and Adat Institution		Agreement with the Government/ Corporation

## Deep Dive Country Profile

### VIETNAM\*

#### COMMUNITY FOREST TENURE IN VIETNAM AT A GLANCE

Total area under communal ownership (million ha) and percent of national territory under communal ownership	None <sup>35</sup> <i>81% of total land allocated to “users” and 19% allocated to “managers”<sup>36</sup></i>
Forest area under communal ownership (million ha) and percent of nation’s forests under communal tenure	None <i>1,128,096 ha or 7.8% allocated to communities<sup>37</sup></i>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Min. Ag. &amp; Rural Dev. (MARD) &amp; MARD’s Administration of Forestry (VNFOREST)</li> <li>» Min. Env. &amp; Nat. Res. (MONRE) &amp; MONRE’s General Department of Land Registration</li> <li>» Local governments: Provincial &amp; District, Commune People’s Committees (PPC, DPC)</li> <li>» Local line agencies: Provincial &amp; District Depts. of Ag &amp; Rural Dev, and Env. &amp; Nat. Res. (DARD, DoNRE)</li> </ul>
FCPF REDD+ jurisdictions:	Six provinces: Thanh Hoa, Nghe An, Ha Tinh, Quang Binh, Quang Tri and Thua Thien Hue <sup>38</sup>
FCPF REDD+ advancements:	ERPA signed 22 October 2020

## COMMUNITY TENURE ARRANGEMENTS IN VIETNAM<sup>39</sup>

<p><b>Indigenous Peoples:</b> The Government of Vietnam does not use the term Indigenous Peoples when referring to the country's 54 ethnic groups, nor are there laws that reference Indigenous Peoples. The government uses the terms “ethnic minorities” and local communities.</p> <p><b>Customary and ethnic minority land rights:</b> There is neither constitutional nor legal recognition of customary land or ethnic minority rights in Vietnam.</p> <p><b>Communities:</b> Defined (Forest Law, 2017<sup>40</sup>) as a “<i>Vietnamese community living in the same village, hamlet, or residential area and having the same customs</i>”.</p> <p>The Forest Law gives priority to forest allocation for “<i>ethnic minority people, households, individuals and communities having traditional customs, culture or beliefs associated with forests and having local community rules in compliance with regulations of law</i>” (Art. 14) and (Art. 16) provides for levy-free allocation of reserve forests to, <i>inter alia</i>, “<i>Communities having belief forests managed and used traditionally</i>.”</p> <p>The Forest Law recognizes religious and customary forests and the need to respect them.<sup>41</sup> As well, there is an argument that the recognition of customary land occurs in practice, where there is acceptance by local authorities.<sup>42</sup> Additionally, the Forest Law is perceived to provide a means for formalization of community, collective, and customary rights through the Forest Land Use Allocation (FLA) process and the Adaptive Collaborative Management Approach (ACMA) framework.</p>	<p>RRI Tenure Type (preliminary designation)<sup>43</sup>: Designated</p> <p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Yes, as consistent with national policy, national land use planning use designation (production, protection, or special use) and in accordance with forest management regulations.</p> <p><b>Management:</b> Yes, limited as per withdrawal</p> <p><b>Exclusion:</b> Yes</p> <p><b>Alienation:</b> Yes, the Forest Law allows “<i>legitimate title holders to lease, exchange, inherit, mortgage and transfer titles</i>.”</p> <p><b>Due Process and Compensation:</b> Lands can be expropriated. The Constitution<sup>44</sup> requires due process with compensation<sup>45</sup> and the Land Law (2013) regulates land recovery, requisition, compensation, support, and resettlement.</p> <p><b>Duration:</b> 50 years</p>
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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Land and forest rights in Vietnam are clearly defined under the state's legal frameworks. The Constitution of Vietnam stipulates that all land and natural resources are public properties, coming under ownership of the entire people represented and uniformly managed by the state. The Constitution and the Land Law recognize the right of organizations and individuals to be assigned or leased land and to have their land use rights recognized by the state through the grant of a land use rights certificate. Land users have the right to transfer their land use rights and practice related rights and duties in concordance with the law. Households that have been allocated agricultural and residential land have their rights safeguarded under the Land Law, including rights to compensation in the event of appropriation of land by the state and resettlement. The Land Law also provides for compensation to households that use agricultural land but have not been granted a land use rights certificate.

The Forestry Law makes provisions for allowable exploitation of all three forest types (special use, protection, and production), enabling forest owners to develop plans and benefit from forests accordingly and in line with the forest purpose. This includes that compensation is to be

provided to providers of forest ecosystem services based on the principles of “*openness, democracy, objectivity and equality; and conformity with the Vietnamese law and international conventions*.” The absorption and retention of forest carbon, reduction of greenhouse gas emissions by reducing deforestation and forest degradation, and sustainable forest management are recognized as forest ecosystem services. The Law on Biodiversity also states that organisations and individuals who benefit from biodiversity exploitation and use are required to share their benefits with concerned parties.

Land and resource tenure issues are a major barrier to REDD+ implementation, a fact recognized at all levels from local communities to national government leaders, and so there is shared understanding that addressing tenure issues are a priority.<sup>46</sup> Consultations with ethnic minority groups found a generalized dissatisfaction in relation to access to forests, specifically: (i) restrictions that prevent extracting logs for housebuilding; (ii) boundary disputes; (iii) conflicts in relation to the over-exploitation of NTFPs; (iv) arbitrary imposition of penalties for breach of existing forest protection laws; (v) very low contract fees for forest protection services; (vi) a lack of respect for traditional knowledge of forests and forest management and governance; (vii) the lack of recognition of customary and traditional forest rights, expressed

as “forests no longer belong to us even though we and our ancestors have been living in and off the forests for such a long time”; (viii) land use rights certificates for special use and protection forests not perceived as useful as they cannot be used as collateral to finance investments in other income-generating activities or provide for other important cultural investments such as marriage and funerals; and (ix) as land use rights certificates for production are useful and important as they may be used as collateral, more of them should be issued.<sup>47</sup>

The systems of land use planning and land allocation are reportedly exposed to high risks of corruption, with widespread agreement that bribes are required to receive land use rights certificates.<sup>48</sup>

**Forest dependency and poverty:** The poorest, particularly the ethnic minority groups, are the most dependent for their income and livelihood on forest resources, and so strengthening their rights over land and forest areas is key to forest management, sustainable livelihoods, and poverty eradication. This may require fundamental changes to how forests are governed and how the benefits are distributed in order to achieve more sustainable land uses and forest protection. About 68 percent of the poor and 73 percent of ethnic minorities are engaged in forestry activities, compared to just 19 percent of the nonpoor and 13 percent of the majority ethnic group (Kinh). As of 2016, ethnic minorities made up 15 percent of the total population and 73 percent of the poor. The patterns of socioeconomic development have tended to concentrate poor people and remaining stands of natural forests in roughly the same geographical areas, where poverty rates are far above the national average. Three quarters of Vietnam’s minority populations live in the Northern Mountains and Central Highlands where remaining forests are concentrated. The causal factors of their poverty are exacerbated by limited access to land or high-quality land and forest, especially given their relatively high level of dependence on NTFPs and environmental services from natural forests for their sustenance. NTFPs are critical for an estimated 24 million people living in and around forest areas and are particularly important for the 8.5 million ethnic minority people living in the uplands, to whom NTFPs represent an important safety net through direct consumption and sales.<sup>49</sup>

Significant gaps remain between existing policies aimed at ensuring rights to access land and livelihoods of ethnic minorities and other vulnerable groups, and the actual rules in use. State Forest Enterprises continue to manage large areas of land, and when pressured to transfer land, prefer to allocate it to private companies instead of local populations.<sup>50</sup>

**Gender and forests:** Women are frequently disadvantaged in their access to and control over forest resources, and in the pursuit of economic opportunities more broadly. Women tend to play specific roles and have specific responsibilities in many forestry value chains which are important for household well-being, food and energy security. While Vietnam has developed various laws and policies to promote women’s rights, surveys reveal that the poor and women are still structurally disadvantaged in that they have less access to land and information, and most probably formal credit.<sup>51</sup>

Women’s rights over (forest) lands are more limited than the rights of men due to the Vietnamese system of household registration that only recognizes a household head, resulting in the preponderance of male recognition as head of the household except where women-headed households may be documented (generally through widowhood, abandonment, or divorce). Although the law requires that land use right certificates, including forest land, bear the names of both spouses, decisions on the use of land is often made by men.<sup>52</sup> Gender equity also continues to be overlooked in most forestry policies. Women are neither encouraged to participate in forest management nor REDD+ decision-making processes despite political commitments asserted in numerous national strategies and formal government policy decisions. Although large numbers of women have participated in REDD+ meetings, and women at the national level tend to be less affected by discriminatory cultural and social norms, significant obstacles remain before the full participation of women is achieved. The recruitment protocol of Vietnam’s forestry sector does not favor women and their participation in REDD+ working groups is often nominal. In addition to weak capacity to implement gender strategies, a lack of concern for gender issues prevails among national organizations working on REDD+ in Vietnam. Current REDD+ payment distribution also fails to address gender. It has not been developed with a gender-sensitive ap-



proach and does not take into account the different perceptions of men and women.<sup>53</sup>

**Forest Land Allocation:** The focus on allocating private land use rights to individuals and households for forest management and protection has substantially weakened collective land management under customary systems. The Central Highlands contain the country's largest forest area, but only 4 percent of ethnic minorities reported that they have forest use access.<sup>54</sup> In practice, it is reported that the recognition of customary land often depends on the acceptance by the local authorities. Yet, state administrators and local communities are mostly unaware of the local customary systems for managing resources and the legal options for allocating land to communities. Laws and regulations reportedly provide more scope for allocation of collectively used land than is generally assumed. Communities can, in theory, receive collective land use rights certificates, but they do not possess any formal governance powers over the same, such as deciding about land use classification within communities.<sup>55</sup>

Similarly, land tenure arrangements are not considered sufficient for the pursuit of sustainable forest management initiatives. The state-centric forest management system prioritizes the interests of Forest Management Boards and State Forest Companies (see Table 1) and sets aside forest land for them, increasing conflict with communities. FLA can also encourage division between different ethnic groups and has led to conflicts in the Central Highlands. Legal rights do not necessarily translate into analogous changes in actual rights and practices, thus remaining a cause of intense negotiations and sometimes conflicts among local actors.<sup>56</sup>

Consequently, land use rights certificates are an insufficient mechanism to promote forest land rights and improve forest management. While they provide some tenure security, revocation of user rights is fairly easy and frequent. Expropriations have been by far the major cause of households losing their land, accounting for 97 percent of cases, with the North and the Central Highlands being areas significantly impacted in the recent past.<sup>57</sup>

The expansion of coffee has been a primary driver of deforestation and degradation in the Central Highlands. It

has resulted in the loss of ethnic minority land to large-scale plantations, often run by the majority Kinh, who have migrated to the region. The government has increasingly sought to decentralize forest management by allocating forest land to households and individuals to improve livelihoods and increase forest cover. However, priority for allocation has generally been given to state forest organizations (see Table 1).<sup>58</sup>

**Free, Prior and Informed Consent (FPIC):** While policies fully recognize the need and enable the inclusion and participation of CSOs and ethnic groups in decision making, participation remains token. Government provisions for tenure security and carbon rights for local households are still being developed, with limited progress since 2012.<sup>59</sup> While the government has strengthened its REDD+ safeguard policies, FPIC is still treated as a sensitive issue.<sup>60</sup>

A media review carried out for this report<sup>61</sup> found three dominant themes: (i) institutional support; (ii) forest land allocation and land titles; and (iii) reforestation. Of the articles reviewed, three-quarters addressed one or more of these themes. The overlap among the themes is likely related to the dominant role of the government in allocating forest land, granting titles and reforestation. The government's reforestation strategy was covered extensively. Stories related the government's ordering local authorities to update forestry policies and urging them and other stakeholders to implement internationally recognized programs such as Payments for Ecosystems Services (PFES), REDD+, Forest Stewardship Council (FSC) certification and the Greater Mekong Subregion Biodiversity Conservation Corridors Project (BCC). Media coverage of these initiatives highlight how they improve local livelihoods and increase forest cover, but few mention the actual rights of Indigenous Peoples and local communities.

Stories on deforestation also note the loss of natural forests through the allocation of economic land concessions, illegal logging and land encroachment. Conversion of forests for agriculture and issues of accountability and transparency are mentioned. There was some criticism of state-controlled management boards for forest protection not holding accountable those responsible for deforestation, including governmental officials, in-migrants, and agroforestry companies.

Media coverage about land policy reform focused on the need to revise the Land Law as well as the Forestry Law. The media quote both local authorities and experts calling for redefining the three types of forests in Vietnam, which currently are special-use forests, protected forests, and production forests. The push to reform policy is driven by local authorities and the perspectives of CSOs are not included in the media coverage.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE

Adaptive Collaborative Management Approach (ACMA): ACMA, which has evolved out of the FCPF/REDD+ program, is viewed along with the establishment of local, multi-stakeholder Forest Management Councils (FMCs), as a promising strategy to address ethnic minority forest and land tenure issues. They provide for representation of local communities in broader forest management decision-making and offer a mechanism for resolving land disputes.<sup>62</sup>

Since the Forestry Law emphasizes collaborative management, and not co-management, ACMAs and FMCs are currently viewed as the vehicles for achieving forest management and conservation goals,<sup>63</sup> particularly in special use and protection forests and production forests. ACMAs are a participatory, collaborative approach to sustainable forest management and conservation under the management of Forest Management Boards and State Forest Companies. They work in a participatory fashion with forest-dependent communities, legal community entities, and small farmers in the implementation of activities in a participatory fashion. This approach supports, amongst others, participatory boundary demarcation and formal agreement on land use and on types of (targeted) sustainable livelihood improvement activities.

The implementation of ACMAs is thus seen as an opportunity to bring clarity and agreement on forest boundaries and forest and land use rights; benefit sharing from the protection of forests, including forest carbon and forest ecological services; strengthen community rights to natural resources and forests; and allow investments in livelihood activities. Most recently, the government has been

supporting collaborative management approaches through the new Forestry Law.<sup>64</sup> How, or if, customary rights might be taken into account in program implementation is not mentioned,<sup>65</sup> as such rights are not recognized in Vietnam. However, as the Forestry Law recognizes for the first time religious and customary forests and the need to respect them,<sup>66</sup> some argue that while state administrators and local communities remain mostly unaware of the local customary systems for managing resources and the legal options for allocating land to communities, that in practice the recognition of customary land occurs where there is acceptance by the local authorities,<sup>67</sup> and thus ACMAs may implicitly allow for the formalization of community, collective, and customary rights through the FLA process and the ACMA framework.<sup>68</sup>

As much or more of a need, rather than an opportunity, is the importance of having a systematic approach for strengthening approaches to FPIC to ensure that the rights of ethnic minorities are not overlooked. The Forestry Law gives priority to assigning forest to ethnic minorities, households, individuals, and communities of people who have customs, traditions, culture, beliefs, and traditions attached to forests, and pledges to respect the living spaces, customs and habits of the communities. This is potentially enormous for securing customary and collective forest rights of ethnic minority peoples.<sup>69</sup> To take full advantage of this opportunity, the FPIC process will be critical.

As noted previously, despite enabling policies, participation remains token and FPIC is often treated as a sensitive issue.<sup>70</sup> Similarly, ethnic minority rights, despite being formally recognized in the Forestry Law, are still not fully implemented in practice, such that the rights of ethnic minority people, in terms of land-use decision making, are often overlooked.<sup>71</sup>

However, there are a number of institutional biases and cultural challenges to be considered. One, is the too common policy discourse that links deforestation to poor and ethnic minority households and their unsustainable practices. This, despite studies that have demonstrated no clear linkages between poverty levels and unsustainable practices. In fact, the poorest segments were found to deforest the least.<sup>72</sup> Linked with this is the widely held view

that ethnic minorities and customary resource practices are in need of modernization, which contrast with the revaluation of these as being well-adapted and well-tailored to often difficult environmental conditions.<sup>73</sup> Then, there are the key findings from a United Nations study on ethnic minorities and the sustainable development goals, which concluded that most ethnic minority or ethnic-related policies are a “one-size-fits-all” and do not reflect the diversity represented by the 53 ethnic minority groups recognized in the country; a diversity that provides significant differences between regions, localities, ethnic groups and genders in terms of poverty rates, livelihoods, access to agricultural and forestry land and other natural resources, educational levels, ecological conditions, and other factors contributing to the specific opportunities and challenges facing different ethnic minorities.<sup>74</sup> In the aggregate, these types of biases make it imperative that an approach that seeks to advance ethnic minority collective tenure rights in forests through ACMA/FMCs will have to be well-guided and tailored to specific conditions and peoples through an ongoing consultation process that fully informs both the communities in question, but also the program administrators and technical staff. Because of perceived weaknesses in FPIC processes, strengthening them will be a longer-term process requiring successful engagements and experiences to build up the confidence and capacity of governments. Thus, in addition to the types of systematic capacity building for FPIC that should be part and parcel of REDD+, FLA, and ACMA/FMC processes and planning, it might also be useful to take the proactive step of carrying out a systematic study across the regions and ethnic minority communities “*who have customs, traditions, culture, beliefs and traditions attached to forests*” and would thus be most likely to be significantly benefitted and impacted by an approach that gives priority in assigning forest to ethnic minorities.<sup>75</sup> This could serve from the outset to provide a framework, as well as orient and guide engagements with the different ethnic minorities.

## STRENGTHENING POLICY, POLICY IMPLEMENTATION, AND INSTITUTIONAL ENVIRONMENT:

There are gaps in policy, capacity, technical know-how, and financing to implement national policies at the na-

tional and sub-national levels, which should be addressed both for purposes of REDD+/PFES/Community Forest Management and securing access and rights to forest. Some of the more important to consider include<sup>76</sup>:

- » Policy:
  - a. Enhance the use and effectiveness of government incentives for sustainable forest management and livelihood improvements for smallholders living in and around forest areas. PFES that are too low to incentivize change need to be raised significantly (e.g., PFES carbon window), better targeted, or combined with other livelihood support programs like social funding programs. There also needs to be clarification and strengthening of land and forest rights as incentives and more inclusive disbursement models (e.g., through ACMA).
  - b. Strengthen legislation to secure tenure and ownership rights in general, and collective rights in particular, to overcome uncertainties over long-term benefits and returns that are a disincentive for investments in forests and forest lands.
  - c. Promote the review of policies and laws to strengthen the recognition of the importance of customary tenure.
- » Policy Implementation:
  - a. Accelerate access to forest lands controlled by State Forest Companies through the ACMA/FMC process and link it with achieving poverty alleviation goals.<sup>77</sup>
  - b. Strengthen and accelerate re-allocation of poorly managed land and forest resources to local communities and households based on consultation and customary rules.
  - c. Accelerate FLA. As of 2019 over 3 million ha has been identified for providing land use rights certificates for the Commune People’s Committee (CPC) land, which requires support both for the FLA process, and subsequently for livelihood support.
  - d. Mainstream FLA, ACMA/FMC, and the prioritization of forest attached ethnic minorities into the provincial socioeconomic development

plans<sup>78</sup> (and relevant district and commune-level socioeconomic development plans, as well).

- e. Develop a systematic targeting strategy that identifies down to the commune level, the priority forest areas in the Northern Mountains and Central Highlands for focused efforts on providing forest access and rights through FLA and ACMA/FMC.

» Institutional Environment

- a. Increase efforts for land dispute resolution between State Forest Corporations and ethnic minority communities.
- b. Intensify efforts to document and map customary tenure systems and promote the allocation of agricultural and forest land to local communities.<sup>79</sup>
- c. Develop capacities and tools for customary and collective forest management systems by:
  - Recreating concepts of community management that follow customs and are clearly differentiated from models of collectivization;
  - Implementing strategies that build close collaboration with local authorities, build local peoples' capacity by informing them of their rights and helping them to exercise their rights through legal and administrative processes;
  - Educating villagers on their rights following land allocation, ensure land use rights certificates are issued, and provide support for the local management of forest land;
  - Ensuring proper consultation so that the allocation process is in line with community wishes for communal, rather than individual, land and forest;
  - Piloting approaches that provide flexibility in varying the allocation process to suit the specific cultural and management contexts of ethnic minorities; and,
  - Undertaking pilot activities to strengthen communities in their management of communal land and natural resources in accordance with customary tenure rules.

## EMISSION REDUCTION PAYMENT AGREEMENT (ERPA):

ERPA provides an opportunity to support all feasible and relevant opportunities noted above, assuming the agreement with the Vietnam Forest Administration, as lead national agency and the participating provinces. Activities detailed in the Emissions Reduction Program Document (ERPD) are of greatest relevance for ethnic minorities, in terms of providing potential for securing or advancing customary collective lands and land right include:

- » Clarification of land and forest boundaries among the forest entities in hotspots areas;
- » Implementation of collaborative management of natural forests between Forest Management Boards, State Forest Companies, and communities;
- » Promotion of community-based forest management implementation;
- » Implementation of incentives to promote climate-smart agricultural and agroforestry through the ACMA in deforestation and forest degradation hotspots; and,
- » Promotion of sustainable use and development of NTFPs in forest areas.

Also, to the extent that the following are understood as being implemented through ACMA arrangements with ethnic minority peoples, and within lands they have traditionally occupied, they would also constitute opportunities (and incentives) for ethnic minority communities to advance, strengthen, and leverage their rights:

- » Implement sustainable management of natural forests by Forest Management Boards and State Forest Companies;
- » Investment in transformation of short-rotation plantations to long-rotation plantations for sawn timbers supply;
- » Investments in reforestation in long rotation plantations;
- » Investments in assisted natural regeneration (e.g., no supplemental planting);
- » Investment in enrichment planting for poor natural forests;
- » Investment in reforestation of coastal protection forests (e.g., mangrove and sand break forests); and,
- » Investment in reforestation of protection and special use forest in mountainous areas.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments and actions	Key stakeholders	Scale of investments	Location of investments	Time-frame of investments
<b>Adaptive Collaborative Management Approach</b>	» Support the development Decree for the implementation of the 2017 Forestry Law, including positive elements supportive of ethnic minorities' customary, collective tenure.	MARD/ VNFOREST Provincial, District, Commune People's Committees	Small (Decree, Strategy)  Large (Scaling-up)	National (Decree)  Provincial (Strategy, Scaling-up)	Short-term (Decree, Strategy)  Long-term (Scaling-up)
Scale-up ACMA/FMC and leverage promise to address ethnic minority forest and land tenure issues, including customary, collective rights	» Support the development of provincial strategies to prioritize and address ethnic minority forest and land tenure issues, including resolution of land and forest conflicts. » Replication or scaling of ACMA/FMC in the Northern Mountains and the North Central and Central Highlands with priority for ethnic minorities.	DARD, DoNRE Forest Management Boards and State Forest Companies Community leaders and communities			
<b>FPIC</b>	» Policy dialogues with provincial governments on the importance for accessing FCPF/REDD+ and meeting the Government of Vietnam's forestry goals for protection and production	Committee on Ethnic Minority Affairs (CEMA) Provincial, District, Commune People's Committees	Small (Policy Dialogue, Development Incentives, Studies)	Provincial	Short-term (Policy Dialogue, Development Incentives, Studies)
Systematic strengthening capacity for and approaches to FPIC	» Strengthen incentives to and capacity for FPIC by local governments » Raise awareness, educate, and help build capacity of local governments, community leaders and members on FPIC and rights » Participatory ethnography studies among key ethnic minority groups in forest areas to orient and improve subsequent FPIC interventions » The structured learning and systematic piloting of ACMA/FMC and collective FLA arrangements that are tailored to ethnic minority culture, and build upon “ <i>traditional customs, culture or beliefs associated with forests and local community rules...[and experiences of] having belief forests managed and used traditionally</i> ”.	DARD Forest Management Boards and State Forest Companies Forest Management Councils Community leaders and communities Academics NGOs	Medium (Awareness/ Capacity, Pilots)		Medium-term (Awareness/ Capacity, Pilots)

Opportunity	Specific investments and actions	Key stakeholders	Scale of investments	Location of investments	Time-frame of investments
<b>Policy</b> Promote enabling policy environment for customary, collective land and forest rights of ethnic minorities	<ul style="list-style-type: none"> <li>» High level policy dialogues and analyses through country partnership strategy development</li> <li>» Support for the Government of Vietnam's 2021 review of its Land Law implementation, with added focus on ethnic minorities and customary, collective land and forest rights</li> <li>» Support for policy dialogues with the Government of Vietnam for the development of a new 2023 Land Law, with added focus on ethnic minorities and customary, collective land and forest rights; review of policies and laws to strengthen customary tenure; remove uncertainties, provide long-term security for forest investments</li> <li>» Support development of ethnic minority-positive policy on NTFPs</li> <li>» Evaluate potential and options for aligning range of public incentives (e.g., PFES, carbon, tenure security, social and rural development programs) to enhance effectiveness and impact, including targeting priorities and supporting CFM, ACMA/FMC</li> </ul>	Ministries of Finance and Planning and Investment MoNRE MARD/ VNFOREST Provincial People's Committees Committee on Ethnic Minority Affairs (CEMA) Academics NGOs	Small	National	Short to Medium-term
<b>Policy Implementation</b> Promote and support implementation of existing policies and frameworks to advance and strengthen customary collective land and forest rights	<ul style="list-style-type: none"> <li>» Promote and support PPCs to accelerate access to forest lands controlled by State Forest Companies and Forest Management Boards through: (i) the ACMA/FMC process; and (ii) the promotion and facilitation of re-allocation to communes (with a minimum quality and access criteria)</li> <li>» Promote and support PPCs to strengthen and accelerate re-allocation of poorly managed land and forest resources to local communities and households based on consultation and customary rules</li> <li>» Promote and support PPCs to accelerate (FLA) processes at commune level and to support livelihood development options.</li> <li>» In relevant locations, mainstream FLA, ACMA/FMC, and the prioritization of forest-attached ethnic minorities into the provincial, district, and commune-level annual socioeconomic development planning process</li> <li>» Developing a systematic targeting strategy that identifies down to the commune level, the priority forest areas in the Northern Mountains and Central Highlands for focused efforts on providing forest access and rights through FLA and ACMA/FMC</li> <li>» Support a fit-for-purpose learning and innovation fund for increasing efficiency and lowering costs of FLA and boundary delimitation</li> </ul>	MoNRE MARD/ VNFOREST Provincial, District, Commune People's Committees Department of Planning and Investment (DPI) DARD State Forest Companies and Forest Management Boards Forest Management Councils Community leaders and communities	Small (Systematic targeting strategy, support to PPCs)  Medium (Mainstream in socioeconomic development planning and fit-for-purpose innovation fund)	Provincial	Short-term (Systematic targeting strategy, support to PPCs)  Medium to Long-term (Mainstream in socioeconomic development planning and fit-for-purpose innovation fund)



Opportunity	Specific investments and actions	Key stakeholders	Scale of investments	Location of investments	Time-rane of investments
<b>Institutional Environment</b> Make strategic investments for increasing capacity; developing and implementing strategies; and developing tools, processes, and procedures for enhancing ethnic minorities and local community land and forest rights and tenure security as a platform for sustainable livelihoods and natural resources management	<ul style="list-style-type: none"> <li>» Support efforts for land dispute resolution between State Forest Companies and ethnic minority communities;</li> <li>» Support efforts to document and map customary tenure systems;</li> <li>» Document traditional forest management and governance systems;</li> <li>» Support development of capacities and tools for customary, collective forest management systems;</li> <li>» Support the conceptualization, testing, validation, and dissemination of community management that follows customs and are clearly differentiated from models of collectivization;</li> <li>» Develop and implement strategies that build close collaboration with local authorities and builds local peoples' capacity by informing them of their rights and helping them to exercise their rights through legal and administrative processes;</li> <li>» Support awareness building and education of community leaders and community members of their rights following land allocation, ensure land use rights certificates are issued, and provide support for the local management of forest land;</li> <li>» Support proper consultation processes to ensure the allocation process is in line with community wishes for communal, rather than individual, land and forest;</li> <li>» Pilot approaches that provide flexibility in varying the allocation process to suit the specific cultural and management contexts of ethnic minorities;</li> <li>» Undertake pilot activities to strengthen communities in their management of communal land and natural resources in accordance with customary tenure rules.</li> </ul>	<p>MoNRE MARD/ VNFOREST</p> <p>Provincial, District, Commune People's Committees DARD &amp; DoNRE Committee on Ethnic Minority Affairs (CEMA) State Forest Companies and Forest Management Boards Forest Management Councils Community leaders and communities Academics NGOs</p>	Large	National and Provincial	Long-term

## STATUS OF LAND AND FOREST RIGHTS<sup>80</sup>

Key Element of Tenure Security	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	<p>Vietnam's legal framework clearly regulates the ownership and rights to land use and forest land. The Constitution of Vietnam states that all land and natural resources are public properties, coming under ownership of the entire people represented and uniformly managed by the state. The Constitution and the Land Law recognize the right of organizations and individuals to be assigned or leased land and to have their land use rights recognized by the state through the grant of a land use rights certificate. Land users have the right to transfer their land use rights and practice related rights and duties in concordance with the law. Households that have been allocated agricultural and residential land have their rights safeguarded under the Land Law, including rights to compensation in the event of appropriation of land by the state and resettlement. The Land Law also provides compensation to households that use agricultural land but have not been granted land use rights certificates. The Forestry Law makes provisions for allowable exploitation of all three forest types (special use, protection, and production), enabling forest owners to develop plans and benefit from forests accordingly and in line with the forest type. This includes that compensation is to be provided to providers of forest ecosystem services. Forest carbon, reduction of GHG emissions and sustainable forest management are recognized as forest ecosystem services. The Law on Biodiversity states that organizations and individuals who benefit from biodiversity exploitation and use are required to share their benefits with concerned parties.</p>	<p>Promote enabling policy environment for customary, collective land and forest rights of ethnic minorities</p> <p>Systematic strengthening capacity for and approaches to FPIC</p>
2. Implementation of legal recognition	<p>Customary land tenure is not recognized and in practice allocation to individuals and state sanctioned bodies like State Forest Companies or Forest Management Boards, have been heavily preferred over allocation to collectives. As a result, the system has substantially weakened collective land management under customary systems which underlies many land-use and forest-use conflicts. Devolution of rights in the forestry sector to individuals, households, and groups is implemented through FLA and the co-management initiatives. Formal land allocation is the main mitigation option available for insecure title, however institutional capacity for FLA is low, although it varies from region to region. The Forestry Law brought positive elements for strengthening the recognition of ethnic communities' customary rights related to forests. REDD+ implementation has effectively facilitated increasing opportunities for upland villagers to strategically claim land titles (e.g., land use rights certificates or "Red Books") from local authorities in the form of communal land certificates for forests. Issues concerning: (i) the duration of forest rights, which in practice are often allocated only for short periods; and (ii) that revocation of use rights is fairly easy and frequent with expropriation being the major cause of households losing their land, with reports (2015) of increased incidences in the North and Central Highlands. No effective mechanism exists to monitor the implementation of FLA to ensure that due process is followed. Corruption is generally a significant problem in issues regarding land, including FLA. Survey results confirm lack of clear guidelines and procedures.</p>	<p>Promote and support the implementation of existing policies and frameworks to advance and strengthen customary collective land and forest rights</p> <p>Systematic strengthening capacity for and approaches to FPIC</p>

Key Element of Tenure Security	Country Findings	Opportunities for policy/action/investment
3. Appropriate regulations for land and resource management	Need is recognized by line agencies that adjustments to regulations are required to enable communities to benefit from management of allocated forest lands. Regulations governing forest management, including timber harvesting, transport and sales, are complex and have high-cost implications that local communities try to avoid, unless part of official development assistance. Community forestry management guidelines are complicated yet unclear on how rights and benefits over forest products are defined and distributed. Taxes on the timber trade are excessive, disincentivizing timber businesses and sustainable management. Latest requirements for sustainable forest management and certification carries high opportunity costs for smallholders, so that local communities are unable to benefit and can hardly pursue any form of commercial timber exploitation. Survey results confirm that understanding of regulations at the community level is problematic and that they do not respect traditional local systems.	Promote enabling policy environment for customary, collective land and forest rights of ethnic minorities Make strategic investments for increasing capacity; developing and implementing strategies; and developing tools, processes, and procedures for enhancing ethnic minority and local community land and forest rights and tenure security as platforms for sustainable livelihoods and natural resources management Systematic strengthening capacity for and approaches to FPIC
4. Effective support from responsible government agencies	<ul style="list-style-type: none"> <li>» Policy documents have fully recognized the need to give CSOs and ethnic groups political space and include them in decision-making. Yet, participation remains token and the rights of ethnic minority people in terms of land-use decision-making are often overlooked. Vietnamese laws and regulations diverge VGGT principles in aspects of consistency of laws, transparency of decision-making, and the participation and consultation of stakeholders. Decision-making has been characterized as obscure and top-down, and subject to being highly influenced by politics. There are perceived institutional barriers to effective participation of non-state actors and local communities, and against transparency and accountability in forestry decision-making processes.</li> <li>» There are limited incentives and benefits for forest users, and FLA has limited financial benefits for households and communities. Natural forests allocated to households and communities, whether production or protection forests, are usually of poor quality, and therefore there is no possibility of income from timber harvesting for several years. In most provinces, the income from forest protection contracts is too low. Similarly, benefit-sharing mechanisms apply to production forests but not the protection of forests and conflicts over protection forests are prominent. Neither technical nor financial support are provided for forest users after receiving a land use rights certificate.</li> <li>» The legal and policy framework to engage local people into sustainable management of natural forests is limited and lacks coordination. The institutional framework governing the forestry sector is well established and with a presence from national to communal levels. Nonetheless, it is quite complicated, with the involvement of different ministries, departments, centres, and institutes. In essence, it comprises fairly rigid hierarchies emphasizing upward accountability while downward accountability remains low. Horizontal cooperation and coordination among different departments and divisions occur but cannot be taken for granted. Cooperation and coordination occur best when the provincial, district, and commune committees are strong enough to ensure it. The difficulties in coordination between key line ministries such as MARD and MoNRE often extends to the provincial and local levels, particularly on key issues such as land use planning. Capacity for effective forest governance and management is insufficient, making sustainability risks substantial. Implementation of reforms needed to improve management of forests will require long-term capacity to support. The survey results suggest that there exists significant political will to improve the situation.</li> </ul>	Make strategic investments for increasing capacity; developing and implementing strategies; and developing tools, processes, and procedures for enhancing ethnic minorities and local community land and forest rights and tenure security as platform for sustainable livelihoods and natural resources management Systematic strengthening capacity for and approaches to FPIC

Key Element of Tenure Security	Country Findings	Opportunities for policy/action/investment
5. Empowered and inclusive Indigenous and community governance	<ul style="list-style-type: none"> <li>» There are provisions for public participation, but in practice it is much more limited and uneven than provided for in the rules. Procedural obstructions mean opportunities to give an opinion usually go to other state agencies rather than to affected communities and the public. Women and vulnerable groups are particularly marginalized over forest management decisions. There is also a lack of incentives for stakeholder participation around forest management and conservation, as decisions on land use and distribution of economic benefits are taken far away from communities.</li> <li>» There are also procedural obstacles. Nominating and putting forward representatives for consultation is not straightforward for local communities, CSOs or NGOs. In most cases, participants feel at best they are kept informed, and somewhat consulted, but nowhere near enabled to influence decisions or actions. Several mass political and social organizations are better placed to engage with decision-making processes, such as the Fatherland Front, the Union of Science and Technology Association (VUSTA), the Farmers' Association, the Women's Union, and the Vietnam Forest Owners Association (VIFORA). In particular, VUSTA has the potential to influence forestry policy processes. VIFORA helps members support their governance, protect their rights, and legitimate their interests in accordance with the laws.</li> <li>» Women are frequently disadvantaged when it comes to the access of and control over forest resources and in the availability of economic opportunities. While Vietnam has developed various laws and policies to promote women's rights, the poor and women are still structurally disadvantaged in that they have less access to land and information, and most probably formal credit. Rural women's concerns continue to not be adequately addressed in areas that greatly impact their livelihoods: land, agriculture, and forestry. Women's rights over (forest) land remain less than men's due to the Vietnamese system of household registration requiring a household head which has resulted in men automatically being named the head of the household except where there are women-headed households (generally through widowhood, abandonment or divorce). Although the law requires that land use rights certificates, including forest land, bear the names of both husband and wife, decisions regarding the use of land is often solely made by men. As common property rights are not formally recognized in Vietnam, for large numbers of ethnic minority communities this has a negative effect on ethnic minority women, since with their reduced land rights, they rely more heavily than men do on common property rights to meet livelihood needs for themselves and their families. Gender equality has not yet been mainstreamed and women's roles in forestry value chains are generally poorly supported by policymakers and service providers.</li> <li>» The aspiration is that ACMA will prove an effective means to address not only land tenure issues, but also issues of representation, involvement of relevant stakeholders, and inclusiveness of decision-making. The survey confirms that women, youth, and minority members of communities are marginalized in decision-making processes, and that while some community organizations have capacity to support, they lack the resources to be effective.</li> </ul>	<p>Systematic strengthening capacity for and approaches to FPIC</p> <p>Make strategic investments for increasing capacity; developing and implementing strategies; and developing tools, processes, and procedures for enhancing ethnic minorities and local community land and forest rights and tenure security as platform for sustainable livelihoods and natural resources management</p>

Key Element of Tenure Security	Country Findings	Opportunities for policy/action/investment
6. Systems for recording community forest tenure rights	<p>» The General Department of Land Administration (GDLA), through the land administration and registration system, registers the land use rights certificates received by individuals, households, groups, communities, and State Forest Companies and Forest Management Boards. This is considered a straightforward, normal process of land administration that is done at the district and provincial Land Registration Offices. A four-province study, however, found that all four provinces shared the same problems in implementing FLA such as: poor database management; inconsistent data between demarcation of areas and formal registration of areas; inconsistent land-use classification between DoNRE and DARD, and out-of-date data. In general, conflicting and overlapping allocations are not uncommon where historical or original allocation processes, often done in the 1980s on maps without the involvement of local people, resulted in boundaries that were not clearly demarcated and in long running disputes between local people and large State Forest Companies or agricultural holdings. One example given is of a nature reserve being provided land already allocated to households and a rubber development company.</p> <p>» At local levels where commune authorities issue land use rights certificates, there have been major difficulties in some provinces from these being issued without proper surveys, leading to confusion as to who has rights to what land and occasional disputes within and between villages. Where accuracy is doubtful, people disregard them or return the certificates to the commune authorities.</p> <p>» The government is aware of these issues and has been working since the passage of the 2003 Land Law on a unified registration system. As of 2019, Vietnam had developed a unified, comprehensive, and decentralized land registration system covering all types of land in the country. At the central level, MONRE has developed and is overseeing reliable procedures and standards for land registration that are being implemented at provincial, district, and commune levels. Cadastral data, both textual and spatial, has been updated and is mostly digitally linked with a Land Information System (LIS) software in land registration offices at provincial and district levels that are well-equipped with modern IT equipment. At the commune-level, access points with internet connectivity have been established in many of the commune offices. However, in not all cases do the land databases that have been developed include forest areas due to the complexities involved.</p>	<p>Promote and support implementation of existing policies and frameworks to advance and strengthen customary collective land and forest rights</p> <p>Make strategic investments for increasing capacity; developing and implementing strategies; and developing tools, processes, and procedures for enhancing ethnic minorities and local community land and forest rights and tenure security as platform for sustainable livelihoods and natural resources management</p>

Key Element of Tenure Security	Country Findings	Opportunities for policy/action/investment
7. Enforcement of tenure rights	<p>» Formal tenure in Vietnam is legally secure when completed and the title is registered, but complications arise with the land administration steps and the transaction costs. The Land Law addressed immediate tenure insecurity problems by extending the term of land use rights certificates. In remoter areas, formal land tenure security in the form of long-term land use rights certificates have been accorded to ethnic minority households, but only in some areas and not in others. Female-headed households generally have less formal access to land and receive less land when land use rights certificates are granted.</p> <p>» While legally secure, land use rights certificates are still not a sufficient instrument to ensure tenure security. Revocation of use rights is frequent, and apparently not difficult. Expropriations have been by far the major cause of households losing their land, accounting for 97 percent of cases, with the North and the Central Highlands being areas significantly impacted in the recent past. A four-province study found that all four provinces shared the same problem of a lack of human resources and political interest in enforcing FLA in highly contested areas. This is a major issue for FLA as the overlap in allocated areas between Forest Management Boards and households often leads to land conflicts.</p>	<p>Scale-up ACMA/FMC and leverage promise to address ethnic minority forest and land tenure issues, including customary, collective rights</p> <p>Systematic strengthening capacity for and approaches to FPIC</p>
8. Protection of collective tenure rights in relation to other forms of tenure and land use	<p>As previously noted, Vietnam does not recognize customary land rights, but collective land use rights certificates are given to groups, such as cooperatives and ethnic minorities. Current government policy, however, is to focus on individual, rather than collective, rights. Reportedly, this policy direction does manifest in authorities attempting to convince ethnic minority holders of collective rights to reallocate them amongst themselves and have their individual households receive a land use rights certificate instead.</p>	<p>Scale-up ACMA/FMC and leverage promise to address ethnic minority forest and land tenure issues, including customary, collective rights</p> <p>Promote and support implementation of existing policies and frameworks to advance and strengthen customary collective land and forest rights</p> <p>Systematic strengthening capacity for and approaches to FPIC</p>



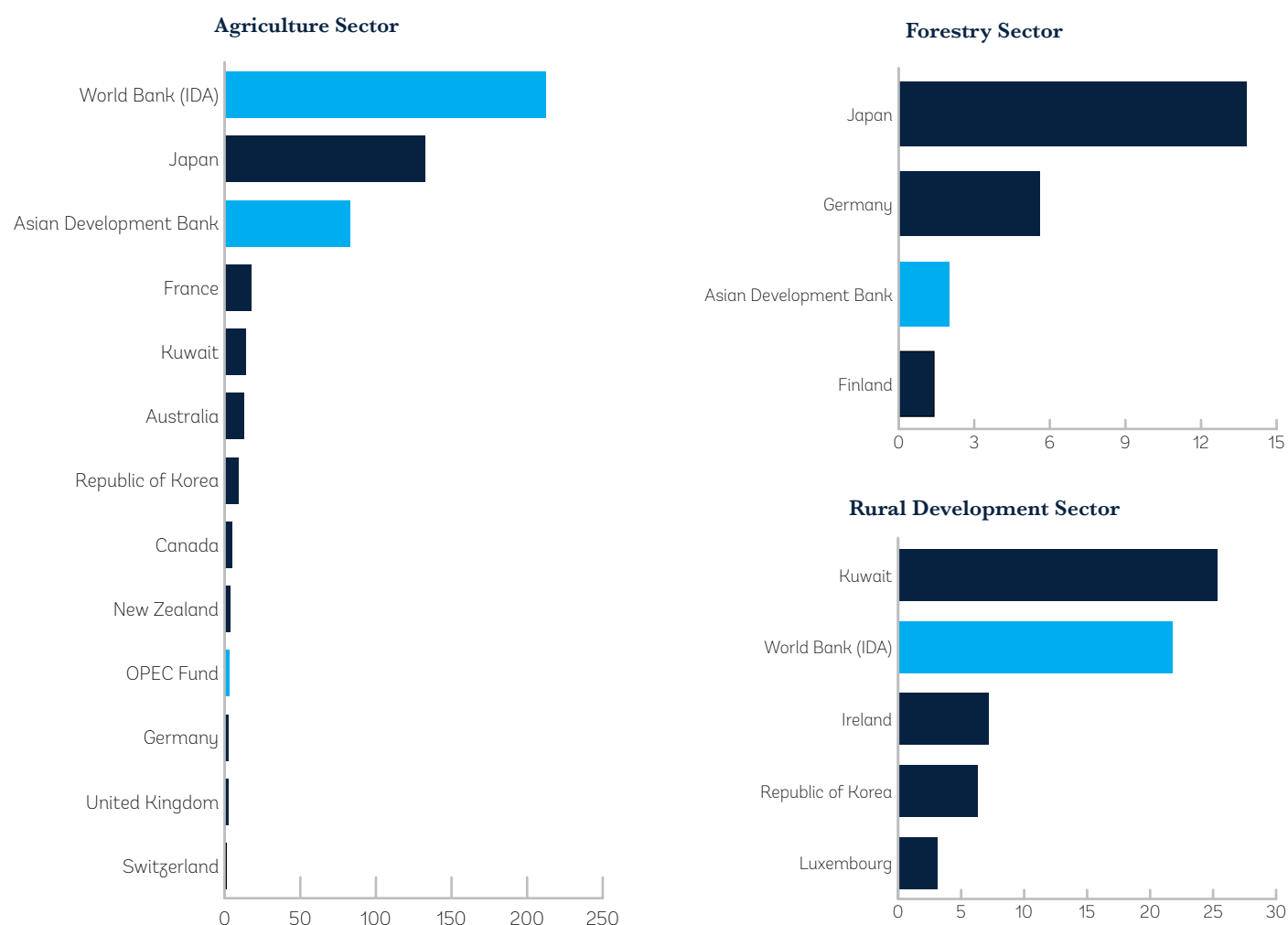
Key Element of Tenure Security	Country Findings	Opportunities for policy/action/investment
9. Conflict and dispute resolution	<p>» Vietnamese political culture favors the resolution of many disputes locally, which is consistent with the notion of grassroots democracy. These disputes may often have no basis in Vietnamese law. Grievances linked to entitlements (actual or perceived) are to first be resolved locally and informally at village, then commune-level. If unresolved, redress may be attempted by district authorities or the aggrieved party may be heard in a court of law, usually at the district level, and whose ruling is legally binding. Grievance redress mechanisms are typically used in the case of involuntary resettlement issues when the aggrieved party argues it has not been compensated according to an instrument such as the Detailed Measurement Survey Memo, or similar. Grievance redress mechanism are also used when affected people have been denied compensation for assets acquired, transitional living allowances, and livelihood restoration measures.</p> <p>» There is no separate system for land disputes or complaint resolution. As policy formulation, implementation, and conflict resolution functions are often not separate, the dispute or complaint resolution body enjoys limited independence. Land-related disputes are widespread, comprising about 70-80 percent the total number of complaints the state receives every year, not mentioning the informal community-based mediation. However, there is no systematic monitoring or feedback to policy. Land disputes usually take time to resolve, which can jeopardize effective land use. Administrative disputes take on average 40-75 days to be resolved. In 70-90 percent of civil cases, a decision on a land-related conflict is reached in the first instance by the court within one year. The share of long-standing land conflicts is between 10-20 percent of the total pending land dispute court cases. A process exists to appeal rulings on land cases, but costs are high and the process takes a long time.</p>	<p>Make strategic investments for increasing capacity; developing and implementing strategies; and developing tools, processes, and procedures for enhancing ethnic minorities and local community land and forest rights and tenure security as platform for sustainable livelihoods and natural resources management</p> <p>Systematic strengthening capacity for and approaches to FPIC</p>

## SIGNIFICANT PROJECTS IN PIPELINE<sup>81</sup>

Project Name	Location	Financier	Implementer	Budget (millions, US\$)	Duration
First Mekong Delta Region Development Policy Operation	Mekong Delta	WB	MPI	350.0	Pipeline
Reduced Emissions through Climate Smart Agroforestry (RECAF)	Central Highland and South Central Coast region	IFAD/GCF	MARD	94.0	Pipeline
North Central Region Emission Reductions Program	North Central Provinces	WB	MARD	51.5	2020 – NA
National Targeted Programs Support	18 Provinces: Cao Bằng, Hà Giang, Lào Cai, Bắc Kạn, Điện Biên, Lai Châu, Hà Tĩnh, Quảng Bình, Quảng Trị, Thừa Thiên Huế, Quảng Ngãi, Ninh Thuận, Bình Thuận, Bình Định, Kon Tum, Đắk Lắk, Sóc Trăng, Trà Vinh.	WB	MARD	1,833.1	2017 – 2021

Project Name	Location	Financier	Implementer	Budget (millions, US\$)	Duration
Forest Sector Modernization and Coastal Resilience	8 Coastal Provinces in three sub-regions: Red River Delta, North Central, & Quang Binh/Quang Tri/Thua Thien Hue	WB	MARD	180.0	2017 - 2023
Improved Land Governance and Database (VILG) Project	33 Provinces	WB	General Department of Land Administration, Ministry of Natural Resources and Environment	180.0	2016 - 2021

## OFFICIAL DEVELOPMENT ASSISTANCE (ODA): OVERVIEW OF SECTORAL DISBURSEMENTS TO VIETNAM<sup>82</sup>



*Note:* Values in millions, US\$ disbursements by multilateral agencies and donor countries.

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area/Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project or program mitigation
Trend of favoring forest management by state entities (Forest Management Boards or State Forest Companies) and private individuals over IP and LC collective	National	Forest management is undertaken largely by state entities, including Forest Management Boards and State Forest Companies. As of 2017, they were managing approximately 47% of forest area, while 69% of forest area was under direct state control. Development of ACMA/FMC may be seen both as evidence of a trend and as a pragmatic response to it.	High	Low
Lack of high-level political will to support recognition of customary tenure in legal system	National	This is a complex issue, which given the diversity of Vietnam, makes it hard to generalize. One reason for limited political will is political sensitivity around customary lands and traditional governance and recent history in Central Highlands (e.g., mass protests in early 2000s over loss of land, culture, and autonomy; flight of ethnic minorities across border into Cambodia; accusations of religious persecution by ethnic minorities adding to the complexity; and sensitivity over border with Cambodia).	High	Low
Lack of high-level political will to support recognition of customary rights in forest management	National	For the reasons described above, recognition of customary, collective rights is fraught. Nonetheless, that customary tenure systems and institutions have persisted despite the strong forces of political, economic, and social change and can play a positive role in the protection and management of land and forest resources is increasingly recognized in law (e.g., 2017 Forest Law), and in increasing references to it in government strategies and other programs (e.g., ACMA/FMC).	Moderate	Moderate/High
Lack of experience and capacity to support communities to adapt customary practices to current statutory contexts	National	Moving from recognition to forest governance and management will require community-level strategies for adapting customary arrangements to new contexts. This includes understanding how customary governance structures can be used for consultation, information dissemination, and reviving customary management.	Moderate	High
Lack of awareness of customary system and biases against them amongst government institutions	National	Government authorities are often unaware of customary management. More than four decades of state intervention has led to widespread loss and abandonment of customs and research is often only able to partially record customary systems. Customs, such as the worship of nature spirits, are often seen by officials as superstitious and an obstacle rather than a tool for achieving forest management policy goals.	Moderate	High

# Country Profile

## FIJI

### COMMUNITY FOREST TENURE IN FIJI AT A GLANCE

Total area under communal ownership (million ha) and percent of national landmass under communal ownership	1.52 <sup>83</sup> /90%
Forest area under communal ownership (million ha) and percent of total forest area under communal tenure	0.85 <sup>84</sup> /90%
Key government institutions for forests and lands	<ul style="list-style-type: none"> <li>» iTaukei Land Trust Board (TLTB)</li> <li>» iTaukei Land Commission (TLC)</li> <li>» iTaukei Land and Fisheries Commission (TLFC)</li> <li>» Ministry of Waterways and Environment</li> <li>» Ministry of Forestry (MOF)</li> <li>» Ministry of Land and Mineral Resources</li> <li>» Ministry of iTaukei Affairs</li> <li>» Ministry of Agriculture</li> <li>» Ministry of Lands</li> </ul>
FCPF REDD+ jurisdictions:	Three largest islands: Viti Levu, Vanua Levu and Taveuni. 90% of national land area and 94% of national forest cover.
FCPF REDD+ advancements:	ERPA signed (Jan. 2021)

### COMMUNITY TENURE CATEGORIES IN FIJI<sup>85</sup>

<p><b>Native Lands (Taukei):</b> Communally owned by the iTaukei People, premised on traditional communal landowning units in the form of <i>Mataqali</i> or <i>Tokatoka</i>. The iTaukei Land Trust Board acts to secure, protect and manage ownership rights and facilitate commercial use transactions.</p>	<p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Yes, including subsistence rights to NTFPs, hunting and timber for subsistence, unless a nature reserve or forest reserve. Commercial rights available through a forest use license issued by MOF and the iTaukei Land Trust Board.</p> <p><b>Management:</b> Yes</p> <p><b>Exclusion:</b> n.d.</p> <p><b>Alienation:</b> Limited, can be only sold to the state. Long-term leases are available for residential, commercial, and industrial uses.</p> <p><b>Due process and Compensation:</b> n.d.</p> <p><b>Duration:</b> Unlimited</p>
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## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

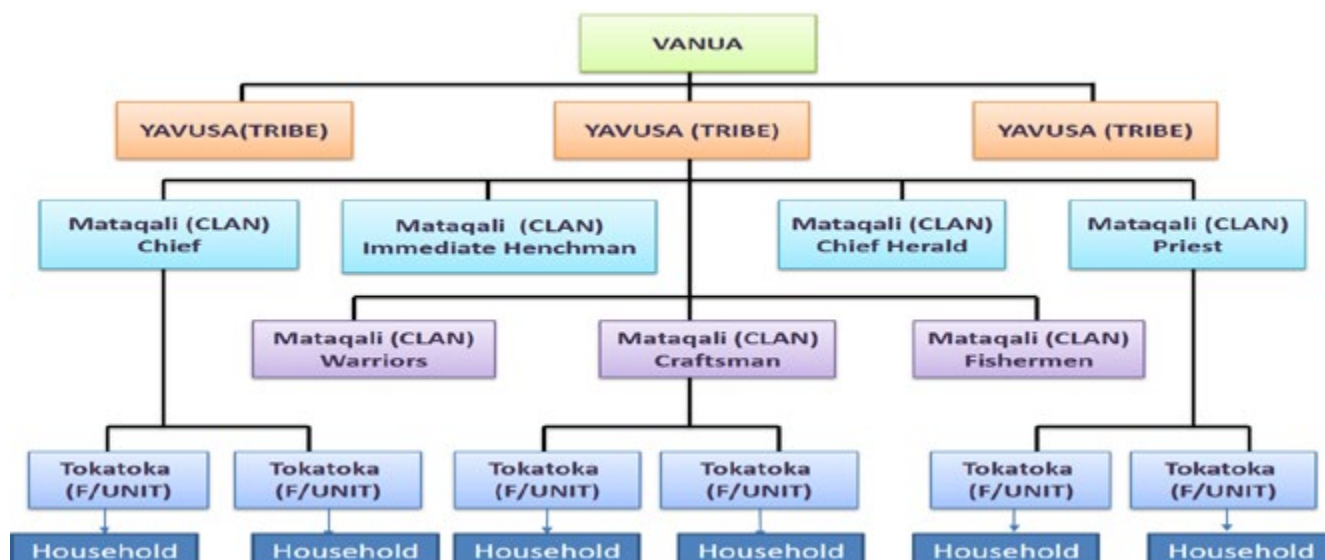
Fiji is a unique case among FCPF Carbon Fund countries: Indigenous Peoples, the iTaukei, own and manage close to 90 percent of the land and forests in the island country. Their ownership is based on a strong legal framework and their rights are clearly defined with the complete registration of lands throughout the country. The customary governance system plays a significant role in the daily lives of Indigenous Peoples and has significant capacity to advocate on their behalf.

In Fiji, forests are owned by those who own the land. Applying common law principles, the same can be said for carbon.<sup>86</sup> Land titles in Fiji are generally not held by individuals and are instead vested in a traditional land-holding group, the *Mataqali*, roughly equivalent to a tribal group,<sup>87</sup> of which several make up a village. The iTaukei Land Trust Board (TLTB) is the entity with control over Indigenous Peoples' lands, and grants leases and licenses for various purposes with the approval of members of the board. Most dealings on iTaukei land, including forests, requires the approval of the TLTB (except for those working through the Land Bank). This includes the TLTB's legal capacity to grant leases and licenses over iTaukei land with precedence over community land use decisions.<sup>88,89</sup>

Important legal enactments that establish Indigenous Peoples' rights and regulate the forest and agriculture sectors include:

- » **Constitution** (2013) – Recognizes customary rights of ownership and protection of Native lands.
- » **iTaukei Lands Act** (1905) – Recognizes communal ownership of iTaukei lands and defines the *Mataqali* as the owners.
- » **iTaukei Lands Trust Act** (1940) – Establishes the iTaukei Land Trust Board as the entity with vested control of iTaukei land.
- » **Forest Decree** (1992) – Requires the approval of iTaukei Land Trust Board in all dealings with customary lands and establishes forest management regulations, including timber licenses, logging plans, royalties, and fire and forest offences.
- » **Forest Bill** (2016, drafted but not yet enacted) – Resolves some weaknesses in the Forest Decree related to the ER-P and forest governance and enforcement.
- » **Agricultural Land and Tenant Act** (1976) – Covers agricultural leases and includes security of tenure, rents and dispute resolution. All leases are subject to conservation provision of the law.
- » **Land Use Decree** (2010) – Provides for alternative leasing procedures and duration and establishes the Land Bank of lands “designated” for lease.

## FIJIAN TRADITIONAL GOVERNANCE STRUCTURE



Source: Forest Carbon Partnership Facility Carbon Fund. Emission Reductions Program Document.

[https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20\\_MASTER\\_v8\\_clean16619.pdf](https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20_MASTER_v8_clean16619.pdf)

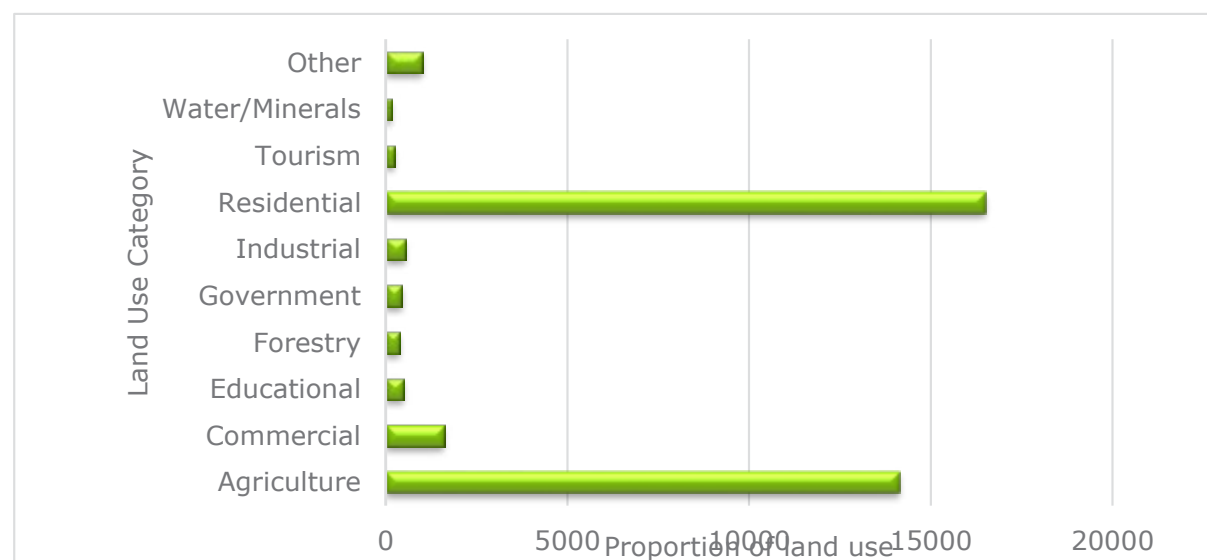
- » **Fair Share Mineral Royalties Act** (2018) – States that 80 percent of mineral royalties be given to landowning units (with 20 percent retained by the state).
- » **Native Land Trust (Leases and Licenses - Amendment) Regulations** (2010) – Governs the distribution of payments received by the TLTB to landowners.

Traditional forest use rights are available to all customary landowners and include fishing, hunting, NTFP harvest and subsistence cultivation. All the various cultures of Indigenous Peoples in Fiji use forest products for a diversity of needs, such as food, medicine, fuelwood, and construction timber. Additionally, landowners can benefit from the commercial harvest of timber on iTaukei lands by obtaining one of two types of timber extraction licenses for commercial forest activities: long term concessions (10-30 years) or annual licenses. Both licenses are issued through the collaboration of the Ministry of Forestry and the TLTB, covering forest and land access rights, respectively. The relatively short term of these leases has been a point of criticism from the private sector, in that it acts as a constraint to long-term investment. In other cases, the recurrent use of annual licenses (at less than a 10-year cycle), and the widespread lack of compliance with sus-

tainable forest management practices and regulations, results in significant forest degradation. An alternative lease regime that can provide for longer tenure (applicable to other land uses such as agriculture) is the Land Use Unit, which requires that iTaukei land be “designated” for the Land Bank, which requires the consent of 60 percent of adult landowning members and approval by the government. Leases extend beyond just natural resources, with the vast majority of iTaukei land leases going toward residential and agricultural uses (see land leases figure), which contribute income to communities. Most plantation agriculture on the islands is grown on Indigenous Peoples’ lands, taking advantage of usage rights that can be leased for up to 30 years. In general, land leasing arrangements for those outside of the customary governance system are complex and fraught with challenges.

Approximately 1 million ha of Fiji’s land is forested, of which the majority (87 percent) is native forest on customary lands.<sup>90</sup> These are owned by communities, with tenure rights largely held with clans. Many are under pressure to issue leases to logging or mining companies for much-needed income. For local income generation, alternatives to extractive leases are lacking as the leasing system is largely designed for larger-scale development, with mining taking precedence. Forest conservation interests argue

## CATEGORIES OF LAND LEASES



Source: Forest Carbon Partnership Facility Carbon Fund. Emission Reductions Program Document.

[https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20\\_MASTER\\_v8\\_clean16619.pdf](https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20_MASTER_v8_clean16619.pdf)



## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE

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that legislation and government resources are inadequate to secure the long-term protection of natural forests under the current system and so efforts are underway to find alternative models for establishing forest conservation areas that generate economic benefits to the local communities. To this end, schemes for utilizing payment for environmental services are seen as attractive options,<sup>91</sup> along with FCPF/REDD+ investments in non-carbon benefits such as improvements to livelihoods, productivity, and job opportunities.

Boundaries of all *Mataqali* lands (indeed, all lands in Fiji) are registered under the Register of iTaukei Lands (RTL) within the Ministry of Lands and Mineral Resources. Cadastral surveys, however, are limited to areas within and near urban centers. Instead, most *Mataqali* lands are defined in the RTL by geographic and physical landmarks and many of the original descriptions of customary land boundaries date to the 1800s. Decades of deforestation, forest degradation and natural disasters have modified many of these boundaries. As a result, land boundary disputes between *Mataqalis* have increased, but in general are said to not be common due to ownership of land being based upon well settled law or custom, with every parcel or tract of land having a name, an owner, and boundaries that are defined and well known.<sup>92</sup> Some disputes can be resolved locally via informal mechanisms and others go to the iTaukei Land and Fisheries Commission (TLFC), a body that has the capacity to mediate disputes related to land boundaries. Illegal logging was reported by 20 percent of villages surveyed for the SESA, which is also associated with unclear boundaries.

One notable weakness of equitable tenure security in Fiji relates to the role of women in decision making. While women have equal right to ownership of customary land, throughout Fiji men tend to hold most positions of power, both in the dominant iTaukei society and minority Indian-Fijian society. The greatest disparity in voice and influence is in public decision-making processes, where women are not encouraged to actively participate despite their deep knowledge of forests and participation in physically demanding labor. Additionally, women lack access to financial credit and markets that would enable their participation in community-based forest enterprises (CFEs).<sup>93</sup>

Fiji is a country where the vast majority of land and forests are already owned by Indigenous Peoples and customary governance is strong and functions with significant capacity. Roles and responsibilities of the customary governance system are well established, though the government's roles are not well understood across sectors and society, and the government lacks capacity for implementing the existing policies and regulations related to natural resources. Fiji has not put a primary focus on IP and LC tenure in the REDD+ strategy, and land and forest tenure are not considered by the ER-P to be a major driver of deforestation. Nevertheless, the ER-P does have activities relating to the government roles in tenure security. Specifically, gains in IP and LC tenure security and the leveraging of rights for community benefits can come from strengthening:

- » Legal framework to enable long-term forest management licenses and land use planning;
- » Government technical capacity to monitor compliance with legal framework and support sustainable forest management;
- » Accountability of governments by sensitizing landowners (i.e., communities and customary governance institutions) to the roles and responsibilities of governments under proposed licensing regimes and forest management rules; and,
- » Social inclusion and advancement of gender equity, including non-Indigenous women.

There are longstanding concerns over tenure as a constraint to attracting outside investment and over access to land for economic development and growth. As a result, some have argued that customary tenure harms growth and so should be replaced by individual freehold tenure. However, the tradition of customary ownership is both very strong and a sensitive topic.<sup>94</sup> In the context of this sensitivity, others suggest that the best way to create secure land tenure is to create an improved system of long-term leases within the customary system. Still, the question of whether customary land tenure in Fiji is or is not a binding constraint on growth and shared prosperity remains unanswered, due in part to an apparent lack of empirical

research on the impact of the land tenure system on poverty and shared prosperity. At the same time, strong counterarguments exist that the main constraints on invest-

ment and growth may not be the nature of land tenure per se, but political instability, poorly enforced contracts, and inefficient dispute resolution.<sup>95</sup>

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments and actions	Key stakeholders	Scale of investments <sup>96</sup>	Location of investments	Timeframe of investments <sup>97</sup>
Advancement of 2016 Forest Bill	» Support advancement of the Forest Bill to ensure strengthening of institutional forest monitoring and enforcement, district land use planning and the development of a long-term forest license regime.	Policymakers	Moderate	National	Short-term
Strengthen Institutional Capacity	» Increase capacity of MOF to engage with and monitor private forest industry actors; » Increase capacity of MOF to supervise sustainable forest management best practices; » Investments in government staff training and capacity building, especially related to regulations, forest management and conservation practices; » Sensitization of customary governance bodies and communities regarding government roles and responsibilities, especially around updated land and resource leasing arrangements and sustainable resource management.	Government officials and staff, NGOs, traditional authorities, customary governance bodies, and communities	Large	National	Long-term
Increase Women's Participation	» Support implementation of the ER-P Gender Action Plan	Women, government officials and staff, traditional authorities, and communities	Moderate	National	Long-term

## STATUS OF LAND AND FOREST RIGHTS<sup>98</sup>

Key Element of Tenure Security <sup>99</sup>	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	Fiji's Constitution recognizes customary rights of ownership over Native lands. The legal framework that guides TLTB does not acknowledge all customary practices that relate to land. Gender inequity is a significant issue and is reported on throughout the literature. The state also has the right to enter all lands in Fiji to search and exploit all minerals.	Advancement of 2016 Forest Bill
2. Implementation of legal recognition	All lands in Fiji are registered - there are no unregistered lands. Issues persist with regards to overlapping boundaries.	
3. Appropriate regulations for land and resource management	Regulations are insufficient to promote the long-term sustainability of forests. Leasing arrangements favor the short-term annual planning cycle versus the long-term investment in infrastructure and planning.	Advancement of 2016 Forest Bill

Key Element of Tenure Security <sup>99</sup>	Country Findings	Opportunities for policy/action/investment
4. Effective support from responsible government agencies	Historically, a shortage of human resource capacity within the Fiji MoF has limited capacity for implementation. Across a range of stakeholders there is low awareness and understanding of rules and regulations governing land use, forest management and conservation.	Strengthen Institutional Capacity
5. Empowered and inclusive Indigenous and community governance	Indigenous Peoples have strong traditions related to resources and land governance. Made according to custom, communal decisions about land and resource use are binding for Indigenous Peoples and third-parties. However, some decisions made by the trustees on the TLTB takes precedence over community land use decisions. Significant social inequality exists in traditional institutions and society.	Increase Women's Participation; Strengthen Institutional Capacity
6. Systems for recording community forest tenure rights	All customary land in the ER accounting area has been mapped in iTaukei Land Commission (TLC) maps and registered in the RTL with the Ministry of Lands; only lands in urban or peri-urban areas have been cadastral surveyed (other areas have boundaries using landmarks). The system is digitized and updated as the National Land Register, with information about land ownership, rights, boundary coordinates, and value.	
7. Enforcement of tenure rights	Lack of enforcement of the regulatory environment is a major contributor to a lack of effectiveness in addressing drivers of deforestation.	Advancement of 2016 Forest Bill
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Overall, Fiji has robust environmental and social policies and laws. Consultation with Indigenous communities is a well-established norm with the Fijian government. Major social gaps between Fijian government laws and policies (i.e., ER-P) are a WB requirement that affected people have living standards restored to pre-project levels and land occupiers without legal rights are entitled to compensation. Environmental gaps are limited (i.e., the Fijian Environmental Management Act does not require a social impact assessment).	
9. Conflict and dispute resolution	There are conflicts between <i>mataqalis</i> over land boundaries that are not always able to be resolved locally. One reason for this is that traditionally, <i>mataqali</i> demarcated land is based on geographical markers. However, due to deforestation, forest degradation, and natural disasters, some traditional boundary markers have disappeared. Cadastral surveys have not always lessened conflicts as they do not rely on Indigenous conceptualizations of boundaries. Women argue that historically they had a much better knowledge of these boundaries, though they may not be consulted during cadastral work. Also, some stronger <i>mataqali</i> were able to take significant territory and resources and there is presently a significant variation in land area versus population. The iTaukei Land and Fisheries Commission (TLFC) arbitrates disputes related to land boundaries but decisions may be appealed to the iTaukei Land Appeals Tribunal (TLAT).	

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>100</sup>

Project Name	Location	Financier	Budget (millions, US\$)	Duration
Emission Reduction Program	Three largest islands (90% of land area)	GEF, private corporations	~43	2021-2025

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area / Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project/ program mitigation
Traditional bias continues to limit women's role in land and NRM governance	National	Strongly rooted traditional bias toward men in land and NRM governance allows for limited space to advance women's views and input.	Low	Low
Financial constraints limit effectiveness of MoF efforts to improve capacity	National	COVID-19 and other financial burdens on the Government of Fiji limit government financial and administrative resources that can be deployed to support technical capacity building and additional human resources capacity in essential MoF efforts related to forests.	Moderate	Moderate

## Country Profile

# LAO PEOPLE'S DEMOCRATIC REPUBLIC (PDR)

### COMMUNITY FOREST TENURE IN LAO PDR AT A GLANCE

Total forest area under communal designation (million ha) and percent of forest area under communal designation	0.02 <sup>101</sup> / <b>0.10%</b>
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Ministry of Agriculture and Forestry (MAF)</li> <li>» Department of Forestry: Division of Village Forestry and NTFP Management</li> <li>» Department of Agriculture and Land Management</li> <li>» Ministry of Natural Resources and Environment (MoNRE)</li> <li>» Department of Land</li> </ul>
FCPF REDD+ jurisdictions:	Six northern provinces (35% of national territory): Bokeo, Houaphan, Luang Namtha, Luang Prabang, Oudomxay, and Sayaboury provinces
FCPF REDD+ advancements:	ERPA signed (Dec. 2020)

### COMMUNITY TENURE CATEGORIES IN LAO PDR<sup>102,103</sup>

<p><b>Agricultural or Forest Land Survey Certificate:</b> A land certificate is an official document certifying the temporary use right of agricultural land or forest land which is issued by the district or municipal administration to an individual or organization that has the right to use such land. After three years, the holder of a land certificate may apply for the land title. Currently, there appear to be no areas currently under this regime. Preliminary analysis suggests this regime may have been subsumed along with Land Titles under the 2019 Land Law into a new framework: "Use of State Lands for Collective Purposes."</p>	<p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Limited, customary use of timber and harvest of forest products for household use, conforming to village regulations.</p> <p><b>Management:</b> Yes, with a designed plan and according to village regulations, laws, and regulations on forests.</p> <p><b>Exclusion:</b> Yes</p> <p><b>Alienation:</b> Limited, can only pass on use rights to successor.</p> <p><b>Due process and Compensation:</b> Land use rights can be expropriated, reallocated, or otherwise extinguished by governments, with compensation for losses.</p> <p><b>Duration:</b> 3 years, renewable</p>
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**Land Title:** Based on customary rights, a communal land title is considered as the main evidence of permanent land rights. As of 2017, of areas held as Land Titles, 17,248 ha are designated as forest and 2,780 ha are designated as agricultural land.<sup>104</sup> Preliminary analysis suggests this regime was subsumed with temporary Land Use Certificates (see above) under the 2019 Land Law into a new category: “Use of State Lands for Collective Purposes.”

**Access:** Yes

**Withdrawal:** Yes

**Management:** Yes

**Exclusion:** Yes

**Alienation:** Yes

**Due process and Compensation:** n.d.

**Duration:** Unlimited

## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

Officially, 49 ethnic groups are recognized throughout Lao People’s Democratic Republic, with extremely high levels of cultural, linguistic, and agro-ecological diversity that are the result of thousands of years of independent cultural development.<sup>105</sup> Over this time, the Lao people have practiced varied livelihood activities in upland forest ecosystems where they obtained food, medicines, fiber, fuelwood, and other forest products. These practices have been, and still largely are, governed by customary rules and guidelines that are locally legitimate and adhered to by the community, despite generally not being written down. Over time, these rules have adapted to the needs of the communities and the characteristics of the natural resources. Customary governance continues to dominate throughout rural forest areas across Lao PDR but is only poorly understood, incorporated into and implemented by policymakers, the legal framework and implementing institutions. In practice, this disconnect between statutory and customary governance results in weak and uncertain forest and land tenure security for communities.

According to the Lao legal framework, the state owns all land and forests throughout the country. Recently, the legal framework has undergone significant reforms that hold potential for strengthening communal or collective<sup>106</sup> land and forest rights:

- » **Revised Forest Law (2019)** – Legally empowers village forest management and village forestry and operationalization is in progress. The law also opened up the state’s forest production areas to large-scale forest plantations.
- » **Revised Land Law (2019)** – Recognizes communal tenure, including on state forest estates

which comprise slightly less than 60 percent of the national territory, but is vague on what qualifies and what types of groups can be registered.

Village lands include state lands managed at the national, provincial and district levels. Communities do not own forests but could, prior to the revision of the 2019 Land Law, secure legally recognized use-rights via two mechanisms: Land Titles and Forest Land Survey Certificates. Land Survey Certificates were one of the documents issued by the various initiatives in Lao PDR over the decades that apply to both non-forested and forested areas, were temporary in nature and were a transitional step toward obtaining a land title. While titling was the most secure form of tenure, it was impractically expensive and time consuming to apply across all of rural Lao PDR, and there exist legal uncertainties with titling forest areas. Recent preliminary analysis suggests that both mechanisms were incorporated into a different tenure regime (“Use of State Lands for Collective Purposes”), though use has been limited up to this point. As a result, donor-led initiatives have favored Village Land Use Plans (VLUPs) and demarcation of customary boundaries. This approach, while lacking a strong legal basis, is widely considered to strengthen de facto tenure security for communities by establishing and making visible to governments and outsiders customary lands and their boundaries as recognized under the Revised Land Law of 2019. The methodologies for VLUPs have evolved over several decades of donor and government initiatives and resulted in varied levels of implementation over 5,000 to 7,000 rural villages.<sup>107</sup> All methodologies have strong technical components (with high associated technical staffing-related costs) and involve some combination of participatory mapping/demarcation of boundaries, land use mapping and registration of documents with the government. Another instrument, the



Village Forest Management Plan (VFMP) has been led by the Division of Village Forestry and NTFP Management within the Department of Forestry and had a goal of covering 2,000 villages by the end of 2020.<sup>108</sup> Similar to the VLUP, this mechanism can register rights with the government (in this case the district-level Agriculture and Forest Office) and produce a variety of documents that provide evidence of land rights and enable forms of forest management. Both instruments are intended as vehicles to secure forest and land rights through the proposed FCPF ER-P activities.

In practice, village land use planning has faced several challenges and opportunities. Due to the lack of a strong supporting legal framework and origination from different mandates (including many external projects), VLUPs are carried out with differing methodologies, objectives and implementing agencies, with varying results. Legal and practical inconsistencies have contributed to challenges with the centralization of land use planning data by the Ministry of Natural Resources and Environment (MoNRE). In addition, as the VLUPs tend to focus more on forested areas, they often ignore the entirety of villages' customary land and resources. This is a severe weakness in the conceptualization of the approach, giving primacy to narrow, external sectoral interests versus the communities' broader land and resources management interests and needs which play out at more of a landscape scale where upland systems cannot be separated from low-land systems as they are connected in ways that underpin overall productivity.<sup>109</sup> Sectoral planning harmonization and inclusion in a multi-stakeholder planning process must be supported to minimize conflicts between competing NRM objectives and interests. Despite the recent legal reforms in the forest and land sectors, and the potential of VLUPs and VFMPs to document and clarify use-rights for communities, there remains significant incoherence related to the different definitions of land and forest use and tenure and the revised laws have yet to be operationalized through the development of procedures and regulations. As conditions for plantation investments improve throughout the country (from the above noted sectoral framework laws), the need for publicly accessible and enforceable village forest boundaries becomes all the more pressing in order to minimize the significant potential for villages to lose rights. While the legal framework

recognizes village customary rights, without village land use planning the government and other actors cannot know where village rights/land are, exposing these lands to expropriation or allocation without compensation or consideration of community interests. In particular, forestlands and forested fallows are important to customary practices but may be overlooked where they overlap with state lands. Government institutions related to VLUP are relatively new, and while staffing may be sufficient at the higher levels (provincial and above), at the district level major gaps remain, severely impacting capacity to support communities. The low level of function for local government institutions is compounded by the country's diverse natural and social landscapes and amounts to a critical weakness in the expansion and implementation of land and forest tenure security. In cases where the local and district level government staff are familiar with the local reality, the lack of cross-sectoral coordination and collaboration limits the government's capacity to utilize such context.

Aside from the challenges, progress has been made on some fronts and there are several reasons for optimism. For the first time, Environmental Impact Assessments for NR sector developments (i.e., gold mines) are being publicly disclosed, representing significant progress in terms of safeguards. Across Lao PDR, many rural villages still have access to high quality forest areas, a key enabling condition for sustainable forest management to be able to drive village-based economic development. It can be expected that the incoherence related to land and forest category definitions and the need to improve NRM sectoral cooperation may motivate the central government to see the benefits of a more definitive cadastral system and land use classification, as well as invest in the institutional capacity to implement village-level planning more widely. The costs of fully financing local institutions represents a significant practical hurdle for the central government during the present economic crisis – likely, it will take concerted, coordinated donor encouragement and support to realize substantive gains with VLUPs and VFMPs on the ground. Additionally, there have been discussions between the Ministry of Agriculture and Forestry (MAF) and MoNRE regarding cross-sectoral collaboration from early in the land use planning process in order to advance the full recognition of land and resource rights (i.e., Land Title).

In addition, there still exists a very significant body and wealth of traditional knowledge and governance systems for land and forest management that are largely (if not completely) ignored by government and government programs. Given the major institutional weaknesses on the part of government, the potential of such traditional systems to provide a foundation and installed capacity for improving forest and land governance and management, if recognized, has potential that may be capitalized upon. Unfortunately, to date, there is still too little known about the extent and capacity of the remaining traditional systems due to the lack of attention to these over the last three decades of support to the forest sector. To date, there is only one systematic study on customary land tenure and so there is inadequate information to influence policy and practice.<sup>110</sup>

Across the ER-P project area in Northern Lao PDR, 40 percent has already been covered by VLUPs and VFMPs from previous projects. An activity of the proposed ER-P activities is to invest in participatory planning in high priority villages, including updating plans where necessary. Additional proposed ER-P activities include: mainstreaming and implementing integrated spatial planning; standardization of templates and strengthening legal provisions for VFMPs and other steps to register land allocations; establishing enabling conditions for sustainable forest management; scaling-up village forestry, plantations, agroforestry, and forest landscape restoration; capacity building with government staff and villagers (specifically ethnic groups, women and the vulnerable) to support village forest management planning and implementation; and value-chain integration and marketing support.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COMMUNITY TENURE:

With a weak, government-controlled civil society and chronically under-resourced and under-staffed government personnel and institutions, there are limited opportunities for the rapid scaling-up of land and forest rights in Lao PDR. However, tenure security in Lao PDR falls along a continuum, from customary to various degrees of formal documentation to permanent recognition (under legally recognized mechanisms – see above). Focused on the in-

termediate degrees of de facto security, donor and government-led initiatives aimed at advancing and strengthening rights through village-level land use planning have demonstrated positive results and potential for further gains. Clarifying and demarcating village boundaries, clarifying land and forest area categories and boundaries, and harmonizing NRM planning, starting with a multi-stakeholder process at the village level, is the clear path forward in Lao PDR to strengthen rights. Opportunities can focus on improving the consistency and compatibility of approaches and procedures for village land use planning while building in sufficient flexibility to allow space for traditional, local knowledge to inform and improve the process and contribute to conservation and livelihood objectives over the long term. Government capacity to provide appropriate, sustainable technical support for land and resource management is severely constrained. Yet, in many cases, communities already utilize customary land management systems that are well adapted to specific contexts and have proven sustainable over time. There is a vast need to assess and document the existing traditional knowledge and systems for land and forest governance. Also of clear importance is the need for ongoing efforts to (i) increase the technical capacity of government partners within a framework that recognizes the inherent budgetary and personnel limitations of government, so that (ii) the needed accompanying efforts for building capacity within local communities and capitalizing upon traditional local knowledge and systems can be oriented by a clear, community-based strategy in which the communities themselves take responsibility for those things which government staff will never be resourced to do. This will also require simplification of regulations and development of fit-for-purpose approaches to land and forest management and regulation to allow communities to benefit economically from sustainable forest management.

Opportunities to advance and strengthen IP and LC tenure security over forest and land and leverage existing rights to obtain benefits for communities include:

- » Expand and better coordinate multi-stakeholder, participatory village land use planning and improve NR sectoral representation and the harmonization of procedures;
- » Support government institutions to develop capacity, approaches, and needed orientations to work with communities to advance participatory,

village-level land use planning that capitalizes on existing traditional systems;

- » Support the systematic analysis of existing traditional knowledge, norms, and systems of land and forest governance in order to progressively, over time, evolve and adapt current, top-down, technocratic systems for land and forest management to locally grounded, institutionally and culturally sustainable systems;

- » Support systematic efforts to simplify regulations and develop fit-for-purpose approaches to forest management and regulation to allow communities to benefit economically from sustainable forest management;
- » Capitalize upon and strengthen traditional community forest management and governance capacity to enable local economic development and incentivize sustainable forest management.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments and actions	Key stakeholders	Scale of investments <sup>111</sup>	Location of investments	Timeframe of investments <sup>112</sup>
Expand and strengthen village land use planning	<ul style="list-style-type: none"> <li>» Include all NRM sectors in multi-stakeholder processes;</li> <li>» Clarify village land areas, including forest and fallows, through systematic consultations to incorporate traditional knowledge, management systems, and participatory demarcation;</li> <li>» Harmonize and coordinate donor-led initiatives and procedures for village land use planning;</li> <li>» Support government institutions and key champions working to advance village-level land use planning, including all customary lands and not just forests, with resources and technical training; and,</li> <li>» Strengthen court procedures and conflict resolution mechanisms.</li> </ul>	Villages and communities, government officials and technical staff	Large	National	Long-term
Documentation and recognition of customary NRM knowledge and systems	<ul style="list-style-type: none"> <li>» Systematic documentation of existing traditional knowledge, norms, and systems for land and forest governance and management; and,</li> <li>» Simplify regulations and develop fit-for-purpose approaches to forest management and regulation based on community-based traditional systems.</li> </ul>	Villages, communities, and government staff	Large	National	Medium-term
Strengthen community forest management and governance capacity	<ul style="list-style-type: none"> <li>» Capacity building and training that builds on traditional governance and NR knowledge and management systems and enables sustainable forest management and community forest-based enterprises;</li> <li>» Micro-loans or other direct investments into community forest enterprises.</li> </ul>	Village-level governance bodies and village entrepreneurs	Large	National	Long-term

## STATUS OF LAND AND FOREST RIGHTS<sup>113</sup>

Key Element of Tenure Security <sup>114</sup>	Country Findings	Opportunities for policy, action, or investment
1. Legal frameworks for tenure rights	A legal framework includes provisions that define and recognize customary land rights, including provisions for communal or collective land registration and titling. However, there is no Constitutional recognition of customary rights and the legal framework is currently undergoing significant reform. Forest governance is highly centralized - the state claims ownership of almost all forestland and customary tenure rights are not adequately recognized or upheld. Gender is included in national policies and strategies and men and women have equal status regarding land ownership and use-rights. However, cultural barriers exist and compliance is fragmented and inconsistent.	
2. Implementation of legal recognition	While the legal framework recognizes customary rights, many rights go unprotected and are ignored in practice. The area claimed or managed under customary systems is estimated to be 21.7 percent (5 million ha) of national territory. However, the area that is legally recognized is less than 0.1 percent of the national territory. <sup>115</sup> Some titling by local authorities is contested by the Government of Lao PDR agencies. <sup>116</sup> Implementation of titling and land use planning is uneven and in most rural areas, the only form of documentation of land rights is a land use plan. Many rural communities have customary rights but no titles or documentation.	Expand and strengthen village land use planning
3. Appropriate regulations for land and resource management	Regulations negatively impact communities' potential to benefit from forests and lands. Competing land-use policies affect community tenure security, and regulatory and technical complexities are a barrier to customary livelihoods and management of natural resources.	Document and recognize customary NRM knowledge and systems
4. Effective support from responsible government agencies	Generally, the capacity of institutions is low and additional resources and staff are needed for local land use planning. Despite weak inter-institutional coordination, political will at the national and subnational levels appear somewhat adequate, with significant recent movement to reform laws and regulations related to forests and land. However, Ministries with sectoral jurisdictions over land compete and collectively constitute a barrier to scaling up recognition of rights. Some local authorities are not sufficiently informed about policies and legislation and how to apply them. Government capacity is generally inadequate without the assistance of international organizations and partners, especially at national scale. Trust between communities and government agencies is weak. Knowledge and experience in participatory forest management and collective rights formalization is limited. Corruption in the forest sector is widespread, though efforts are being made to improve the situation.	Expand and strengthen village land use planning; Document and recognize customary NRM knowledge and systems; Strengthen community forest management and governance capacity
5. Empowered and inclusive Indigenous and community governance	CSOs are relatively weak in Lao PDR and are heavily controlled by the state; participation by CSOs serves to raise awareness and contribute to the implementation of local pilot project activities. Local CSOs lack capacity and the political system and governance structures in Lao PDR are unsupportive of participation by CSOs. Many communities may still maintain strong customary NRM knowledge and governance.	Expand and strengthen village land use planning; Strengthen community forest management and governance capacity; Document and recognize customary NRM knowledge and systems

Key Element of Tenure Security <sup>114</sup>	Country Findings	Opportunities for policy, action, or investment
6. Systems for recording community forest tenure rights	A centralized land registry exists at MoNRE but land allocation, registration, and titling processes tend to be decentralized; therefore, the most accurate information is at the district level. No requirements for publicly accessible maps or records of tenure arrangements are in place. Guidance on mapping and registration of land at the village level (including storing information and maps) include communication with villagers and participation, though in reality implementation and public participation is limited. No policies, laws or regulations specify that information on concessions, ownership, and management plans must be made publicly available. No comprehensive up-to-date data is available on the number of village forests and land areas under village forest management.	Expand and strengthen village land use planning
7. Enforcement of tenure rights	Enforcement has been improving despite limited resources for forestry officials but overall compliance with land use plans is weak. There is limited staff, financing, and technology for enforcement.	
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Public consultation is mentioned in most laws, but the procedural aspects of participation are not well defined. However, most Production Forest Areas (PFAs) have management plans that require local engagement and documentation of engagement. Concessions outside PFAs are required to consult stakeholders, though this is usually absent. Concession contracts are required to protect forest-based livelihood opportunities, though contracts are not available for verification. Leases and concessions for certain activities are required to conduct ESIA and mandates consultation with local communities. The Land Law stipulates that in public infrastructure development projects that damage trees, landowners have the right to be compensated. Provincial and district offices do not have sufficient technical and financial capacity to evaluate operations and assess compliance.	Expand and strengthen village land use planning
9. Conflict and dispute resolution	The legal system is unable to deal with the increasing number of land conflicts. Neither village dispute resolution committees nor district departments of justice are considered effective. Judiciary is not seen as independent. Customary rights are sometimes vague and contradictory and cannot be defended under current court system in case of land disputes. While conflict resolution is usually undertaken at the village level, some land conflict-related complaints are taken to the National Assembly.	Expand and strengthen village land use planning

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>117</sup>

Project Name	Location	Financier	Budget (millions, US\$)	Duration
LA - Scaling-Up Participatory Sustainable Forest Management Project (Additional Funding)	Bokeo, Luang Namtha and Oudomxy Provinces	WB	5	2019-2021
Livelihoods and Landscapes	Selected State Forests throughout Lao PDR	WB/GEF	57.4	03/2021-NA
Enhancing Systematic Land Registration	National	WB	25	07/2020-NA
FCPF: Northern Laos Emission Reduction Payments	Six northern provinces (35% of national territory): Bokeo, Houaphan, Luang Namtha, Luang Prabang, Oudomxay, and Sayabouri provinces	WB	42	02/2020-NA

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area/Jurisdiction		Description	Estimated level of impact on tenure reform measures	Potential for in-project or program mitigation
Competing land use policies and sectoral institutions	National	Uncoordinated policies and institutions increase likelihood of conflicts over resources and land.	High	Low
Insufficient government and CSO capacity to scale-up village land use planning	National	Weak government and CSO capacity and the high technical nature of planning processes and facilitation decrease the potential for the rapid scale-up of village land use planning outside of donor-implemented and funded projects.	High	Moderate
Insufficient public consultation in planning and demarcation processes	National	While public consultation is required by law in most cases, procedures for implementation are insufficient.	Moderate	Moderate
Conflict resolution mechanisms are insufficient for increased demand	National	While village land use planning and NRM harmonization approaches across sectors are intended to decrease conflicts, the process of clarifying forest areas and village boundaries may be contentious.	Moderate	High
Plantation development conflicts with village forest rights	National	Village forests may not yet be captured by VLUPs and may be subject to competing claims, exacerbating conflicts.	Moderate	Moderate
Insufficient government enforcement (monitoring and compliance) of village land use plans	National	Persistent lack of government capacity translates into inadequate enforcement of land use plans, limiting the realization of improved land and forest security for communities.	High	Low
Efforts to stabilize shifting cultivation weaken traditional and customary NRM governance	National	Shifting cultivation is intimately connected to customary governance and traditions and cannot easily be substituted for sedentary agriculture; context for traditional practices may be poorly understood in some areas and by institutional actors.	Moderate	Low



## Country Profile

# NEPAL

### COMMUNITY FOREST TENURE IN NEPAL AT A GLANCE

Forest area under communal designation (million ha) and percent of nation's forests under communal designation	2.07 <sup>118</sup> /32%
Key government institutions for community forests	<ul style="list-style-type: none"> <li>» Ministry of Forests and Environment (MoFE)</li> <li>» Department of Forests (DoF)</li> <li>» Division Forest Offices (DFOs)</li> <li>» Department of National Parks and Wildlife Conservation (DNPWC)</li> </ul>
FCPF REDD+ jurisdictions:	Terai Arc Landscape (15% of territory)
FCPF REDD+ advancements:	ERPA signed (February 2021 <sup>119</sup> )

### COMMUNITY TENURE CATEGORIES IN NEPAL<sup>120</sup>

<p><b>Community Forest:</b> National Forest handed over by Division Forest Officer to a user group for development, conservation, and utilization, in accordance with a community forest operational plan approved by the Division Forest Officer. This is the most important type of communal tenure in Nepal.</p>	<p><b>RRI Tenure Type<sup>121</sup>: Designated</b></p> <p><b>Access:</b> Yes</p> <p><b>Withdrawal:</b> Yes, for commercial and subsistence purposes, with Community Forest Operational Plan</p> <p><b>Management:</b> Yes, within approved Operational Plan</p> <p><b>Exclusion:</b> Yes</p> <p><b>Alienation:</b> Limited, only in the case of forest products as collateral for purpose of developing community forest or certain infrastructure</p> <p><b>Due process:</b> Government must follow due process but is not required to provide compensation when extinguishing rights</p> <p><b>Duration:</b> Unlimited</p>
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**Community Leasehold Forest**

**Granted to Communities:** National Forest handed over to any institution or community industry to produce raw materials for industry, sell forest products by promoting afforestation, utilize in tourism industry, operate agroforestry practices, or farm wildlife. In the event that several entities apply for a leasehold forest in the same area, the poorest community is given priority.

**RRI Tenure Type: Designated**

**Access:** Yes

**Withdrawal:** Yes, as specified in the Work Plan and limited to commercialization of products not existing in leasehold before lease was granted (or with permission)

**Management:** Yes, within limits specified in the Work Plan

**Exclusion:** Yes

**Alienation:** Limited, sale or transfer of right at end of lease term to another entity (with Ministry approval)

**Due process:** Government must follow due process but is not required to provide compensation when extinguishing rights

**Duration:** 40 years (renewable)

**Religious Forest Transferred to**

**Community:** National Forest handed over to any religious body, group or community for its development, conservation, and utilization for religious purposes.

**RRI Tenure Type: Designated**

**Access:** Yes

**Withdrawal:** Yes, but not for commercial purposes (except for sale of timber and fuel wood where earnings are for religious purposes)

**Management:** Yes, within limits of the Work Plan

**Exclusion:** No

**Alienation:** No

**Due process:** Government must follow due process but is not required to provide compensation when extinguishing rights

**Duration:** Unlimited

**Buffer Zone Community Forest:**

Areas around national parks or reserves, in order to provide the local inhabitants, the facility of utilizing forest products on a regular basis

**RRI Tenure Type: Designated**

**Access:** Yes, users' committee controls access

**Withdrawal:** Yes, but only those grown by users' committee itself

**Management:** Yes, according to users' committee Work Plan approved by protected area Warden

**Exclusion:** Yes

**Alienation:** No

**Due process:** Government must follow due process but is not required to provide compensation when extinguishing rights

**Duration:** Unlimited

**Buffer Zone Religious Forest:** Forests that have been transferred to a religious body, group, or community to develop, conserve, and utilize religious places of historical significance that are situated in the buffer zone.

**RRI Tenure Type: Designated**

**Access:** Yes

**Withdrawal:** Yes, timber and fuelwood for religious purposes

**Management:** Yes, for religious purposes only

**Exclusion:** No

**Alienation:** No

**Due process:** Government must follow due process but is not required to provide compensation when extinguishing rights

**Duration:** Unlimited

## SUMMARY OF FOREST RIGHTS AND KEY ISSUES:

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Over the past 40 years Nepal has shown that transferring forest rights and responsibilities to community forest user groups (CFUGs) can support conservation-related goals. Presently, over two million ha of Nepal's forests are managed by 22,266 CFUGs, including many poor households benefiting from allocations within community forests for NTFPs. The most important and widespread type of collective tenure are community forests, where use and access rights to areas of national forest are handed over by Division Forest Officers after their approval of a community forest operational plan. The Government of Nepal intends to further hand over more national forest areas to CFUGs, including through the FCPF ER-P activities in the Terai Arc Landscape and through the Forests for Prosperity Project financed by the WB's Forest Investment Program (FIP). This broad allocation of use-rights to communities has had positive impacts on both conservation and poverty reduction, with one national-level study finding a 37 percent relative reduction in deforestation and a 4.3 percent relative reduction in poverty in a sample of 18,000 community management initiatives.<sup>122</sup> However, informants in the study expressed that the full potential of community forest management for improving the livelihoods of community members has not yet been fully realized. Forest policy and regulation, which have been more oriented towards forest conservation and subsistence-level usage, constitute formal barriers that make it difficult for communities to meet legal requirements for formulating plans for expanding entrepreneurial activities through sustainable management, harvesting, transporting, processing, and selling timber. The situation is further compounded by the poor capacity of government officials to implement the regulations, which in turn creates additional costs for communities to harvest timber. As an example of a regulation that limits community potential to benefit from forests, Forest (Clearance) Guidelines (2017, revised in 2019) developed by the Government of Nepal, do not address social compensation for community forests cleared for projects, such as infrastructure development. In effect, the government can take away user rights from CFUGs for national priority projects, highlighting a point of insecurity for communities. Informal barriers exist as well, such as corruption and elite capture, which are also identified as

serious issues for CFUGs. The barriers and resulting high transaction costs currently limit the potential of SFM to contribute to poverty reduction goals.<sup>123</sup> Social benefits from the forest sector are also highly uneven. Eighty-nine percent of women are involved in agriculture and forestry sectors, yet this is mostly informal, unpaid work. Women's participation is extremely limited in forest policy decision-making, institutions and forest-related skilled work. Indeed, less than 1.2 percent of micro-small-medium businesses in Nepal are owned by women.<sup>124</sup>

Overall, the legal framework recognizes community rights to public land through Forest Act (2019) provisions relating to community forests and other communal regimes, and the expansion of rights to full ownership are not yet actively being sought by civil society and CFUGs. However, it should be noted that rights are exclusively for use and management, subsistence and commercial, and can only be exercised through government officials who possess significant power and authority over decisions (i.e., Division Forest Officer). Important legal enactments and policies related to community forests include:

- » **The 2015 Constitution of Nepal:** The 2015 Constitution of Nepal devolves powers in a federal arrangement composed of federal, provincial, and local spheres of government, defining seven new provinces and 753 local governments. Successful elections in 2017 to all three tiers of government facilitated the devolvement of functions to lower levels of government through the ongoing process of drafting new legislation, institutional and sectoral procedures, rules, regulations, and guidelines.
- » **Local Government Operation Act (2017):** Provides legal clarification of local governments exclusive and concurrent functions related to forests.
- » **Forest Act (2019):** Framework and rules for most activities related to community forest management in national forest areas. It is a major act that determines IP and LC access to forests.
- » **National Parks and Wildlife Conservation Act (2019):** Relates to National Parks and Wildlife Reserves, which fall outside of the Forest Act.
- » **National Forest Policy (2019):** Aims to promote sustainable forest management and forest productivity, including Community-Based Forest Management (CBFM).

Presently, the overriding issues with the operating environment are the lack of clear responsibilities and mandates between the different levels of government, the development of fit-for-purpose provincial and local rules, regulations, and guidelines related to the forest sector and community forest management,<sup>125</sup> and weak implementation capacity in terms of the preparation of technical management plans of both communities and the relevant government officials on the ground. The ongoing process of federalization that began with the 2015 Constitution, which included the 2017 elections, has led to a highly contested devolution of forest resources to the federal, provincial, and local governments. A major challenge is that federalization requires cooperation and coordination, while the three levels of government have unclear and concurrent mandates. Additionally, the devolution process is highly disruptive in that it necessitates a restructuring and reassignment of public sector staff. Provinces are assigned responsibility via the Forest Act for management control of forests and technical support, though this is contested by the Forest Policy and Local Government Operation Act which implies a significant role for local government, and local governments, which at present mostly lack meaningful capacity, are responsible for monitoring and compliance, taxation, and registration activities. At the local level, some mayors argue that CFUGs should come under their jurisdiction, despite the Forestry Act providing for their autonomy. Local governments vary widely in their politics and capacities, and their motivations may include an interest in CFUGs as a revenue source to acting out of a sense of responsibility for their success. Considerable confusion will prevail until the roles of each level of government are clarified, systems of implementation are built, and mechanisms are developed to manage overlapping responsibilities. Questions as to the role and jurisdiction of CFUGs and forest and fiscal management within the new government structure will necessarily take time to negotiate and resolve and are, at their root, political processes. In order to durably improve governance and institutional capacity, externally funded projects and investments in the forest sector must support and work with this emerging institutional structure.<sup>126</sup>

Despite the ongoing challenges related to the operating environment, the potential for communities to benefit

from sustainable forest management and added-value activities is significant, as is the potential for the productive management of community forests to contribute to Nepal's economy, and poverty reduction and climate resilience goals.

One estimate is that fuelwood and timber harvests could generate employment opportunities for 4.8 million people.<sup>127</sup> Decades of conservation and protection of forest resources by communities has increased the potential for rural communities to benefit economically from forests. The context of community forests in the local economy has shifted in recent years as subsistence activities and non-timber forest products have declined in importance as communities rely increasingly on remittances, migration, and formal jobs. With the Covid-19 crisis, many assumptions around rural labor availability, income related to remittances, and demand of agricultural products may need to be revised, with uncertain implications for community forestry. For community forestry in Nepal to meet expectations around livelihoods and rural economic security and development, a stronger focus needs to be put on forest resources production and commercialization. Functionally, many CFUGs are inactive, with outdated operational plans which have been hampered by restrictive policies and regulations, limiting incentives for both active management and the development of processing capacity. Forest staff respond that they sometimes cannot provide technical support since they lack funding to revise operational plans. Indeed, building durable capacity within government—especially municipal and provincial field staff—to support CFUGs, and within the CFUGs themselves, may represent the best pathway to achieving livelihood benefits for communities, as many services currently rely on projects - both internally and externally supported. Already, more DFO time is spent supporting collaborative forestry, where governments take 50 percent of the benefits, than community forestry, where CFUGs take 100 percent of the benefits, highlighting that technical support may need to be provided to CFUGs via an alternative, yet undefined, source. Indeed, REDD+ financing may only be able to represent a fraction of the support needed to increase technical capacity of CFUGs.

## SYNTHESIS OF OPPORTUNITIES TO SECURE COLLECTIVE TENURE

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In order to advance collective tenure rights, increase tenure security and leverage rights to benefit communities and address deforestation, simultaneous activities and investments can be supported in Nepal that include:

- » Influence community forestry policies to better align them with the Government of Nepal's rural poverty reduction goals and legal and regulatory provisions to remove barriers and enable sustainable, productive management, processing, and marketing of forest products;
- » Extend forest use rights to more communities and strengthen tenure rights, especially in those municipalities where the history of local government engagement in community forestry has been, on balance, positive;
- » Leverage existing forest use-rights by increasing local, technical capacity for sustainable commercial management of community forests, revising and updating operational plans, and processing and marketing forest products.

Donors must first and foremost consider opportunities that leverage existing use-rights by increasing the profitability of community forests for CFUGs and create opportunities for rural people to benefit economically from forests. Investment potential and specific investments in this area will differ based on the capacity of specific

CFUGs, the forest management capacities of provincial and local governments, and the quality of the forest resources. In some cases, forests are mature and in need of thinning to maintain productivity, and access to finance is a constraint for many CFUGs investing in value addition (both activities supported by the Forests for Prosperity Project). Other actions may include: (i) the utilization of the state restructuring process to expand the commercial scope of community forestry and improve its governance; (ii) capacity building and trainings for government officials and technical staff related to forest management; (iii) supporting CFUGs to develop operational plans that reflect the needs and capacities of the community; (iv) capacity building and training for CFUGs on technical forest management (i.g., forest technicians support forest inventory activities), development and updating of appropriate operational plans and relevant forest-sector regulations; and (v) building local capacity for forest-based community enterprises and stimulating demand and a strong domestic and international market for value-added forest products, an essential step to realizing economic benefits from expanded supply. In addition, the well-tested use-rights based regime in Nepal can be expanded to new areas of the country and these rights can be strengthened by influencing the operationalization of the Forest Act as rules, regulations, and guidelines are developed at the provincial and local levels. While these implementation guidelines are drafted over the coming months, there exists a unique opportunity to make regulatory changes that can enhance tenure security and incentivize investments.

## ENTRY POINTS AND SPECIFIC OPPORTUNITIES

Opportunity	Specific investments and actions	Key stakeholders	Scale of investments <sup>128</sup>	Location of investments	Timeframe of investments <sup>129</sup>
Improve governance and influence community forestry policies and legal provisions	<ul style="list-style-type: none"> <li>» Establish high-level, multi-stakeholder platforms for discussion and resolution of community forestry-related issues with a complimentary system for review of community forestry program progress, including monitoring and effectiveness of capacity development for stakeholders and of governance;</li> <li>» Influence rules, regulations, and guidelines being developed from the Forestry Act to strengthen collective rights and align with the Government of Nepal's poverty reduction goals. For example, they may restrict DFO's power to extinguish community forestry rights; the ability to build a sawmill less than one km from forests; include provisions for social compensation after loss of forest area for public purposes; and develop fit-for-purpose forest regulations to enable community forest management and enterprise development</li> </ul>	Provincial and local government policymakers, FECOFUN and other organizations representing CFUGs	Small	National	Short-term
Extend forest use rights to more communities	<ul style="list-style-type: none"> <li>» Planned as part of ER-P and can expand to other areas;</li> <li>» Includes mapping and demarcating community land and forests, increasing local capacity for obtaining rights, and developing operational plans.</li> </ul>	Provincial and local government technical services and officials related to community forestry (i.e., DFOs and CFUGs)	Moderate	National	Medium-term
Increase local capacity for sustainable forest management, revising and updating operational plans, processing and marketing forest products, and local administration and governance of commercial community forestry	<ul style="list-style-type: none"> <li>» Trainings and capacity building for government officials tasked with supporting CFUGs;</li> <li>» Trainings and capacity building for CFUGs related to forest management and development of operational plans;</li> <li>» Support and resources for updating and revising operational plans to facilitate sustainable forest management and forest operations;</li> <li>» Support resources for forest products-based community enterprises to facilitate adding-value and marketing;</li> <li>» Support capacity building for municipal-level administration in the governance of forests and forest resources.</li> </ul>	CFUGs, DFOs and local and provincial government officials that support forest management, forest-sector community enterprises, and regional and national forest-sector trade and marketing organizations	Large	National	Long-term



## STATUS OF LAND AND FOREST RIGHTS<sup>130</sup>

Key Element of Tenure Security <sup>131</sup>	Country Findings	Opportunities for policy/action/investment
1. Legal frameworks for tenure rights	Collective rights are not recognized by the Constitution. The national legal framework hand over significant use rights to communities, but not ownership, delegating significant management and oversight responsibility to government officials. Despite recent legal reforms like the Forest Act DFOs can extinguish community forest rights without consultation or consent. Formal gender guidelines are progressive but implementation is lacking. As a consequence of recent legal reforms and federalization with the 2015 Constitution, significant lack of harmonization and jurisdictional clarity exists within government institutions and between different levels of government. The legal framework affirms women property rights, including equal Constitutional protection, and while some governance rights exist for IP and LC women under Nepalese law, there still exist major gaps. <sup>132</sup>	Influence community forestry policies and legal provisions
2. Implementation of legal recognition	Around 14% (2.1 million ha) of the country's lands are recognized under collective designations. Another 32.3% (4.6 million ha) of the country is claimed by IP and LCs but legally unrecognized. <sup>133</sup> Procedures for establishing CFUGs are clear but implementation of formal gender guidelines are insufficient.	Extend forest use rights to more communities
3. Appropriate regulations for land and resource management	Can be difficult to comply with onerous regulations related to tree harvest; DFOs may be reluctant to approve timber harvest permit applications (even if in operational plans) for fear of being responsible for regulatory compliance. Forest inventory requirements related to community forests are often to satisfy bureaucratic requirements and may not guide forest management decisions.	Influence community forestry policies and legal provisions
4. Effective support from responsible government agencies	Government capacity has so far facilitated significant devolution to communities. However, issues include: insufficient decentralization of power to local governments which limits capacity to carry out forest sector planning at local levels; insufficient capacity of government to assist in management and support revising operational plans required by the Department of Forest to set out management rights; poor capacity to institutions and service providers on gender issues; political interference and lack of political will; and weak coordination and cooperation among agencies. The government needs capacity enhancement in terms of implementation and enforcement of regulations and to resolve overlapping and inconsistent legal provisions. Government organizations have limited communications capacity and cannot always work with CFUGs effectively.	Increase local capacity for sustainable forest management, revising and updating operational plans, processing and marketing forest products, and local administration and governance of commercial community forestry
5. Empowered and inclusive Indigenous and community governance	Due to an absence of sufficient technical support from governments, more than 40 percent of CFUGs are unable to update their plans and hence cannot harvest timber and non-wood forest products from their forests. <sup>134</sup> Certain donors, CSOs, and NGOs operate in a somewhat parallel governance structure to the government due to limited government capacity. However, while they can achieve limited expansion of community management of forests, their capacity is limited in terms of furthering livelihood objectives. Governments and CSOs have limited capacity to support entrepreneurship development in communities and communities lack access to financial resources to invest in value addition.	Increase local capacity for sustainable forest management, revising and updating operational plans, processing and marketing forest products, and local administration and governance of commercial community forestry
6. Systems for recording community forest tenure rights	Community-based tenure rights appear to be recorded by the government and to be widely available.	Link rights data with management plans accessible to local, district and national levels

Key Element of Tenure Security <sup>131</sup>	Country Findings	Opportunities for policy/action/investment
7. Enforcement of tenure rights	Ongoing political transformation has hindered law enforcement; encroachment remains an issue, driven by high levels of landlessness.	Modernize law enforcement; improve local mediation encroachers linked to management plans
8. Protection of collective tenure rights in relation to other forms of tenure and land use	Encroachment into forests is an issue that leads to involuntary resettlement. Sixty-five percent of Indigenous Peoples' ancestral lands are now in conservation areas. <sup>135</sup> Consent is not required for DFOs to extinguish community-held forests. While REDD+ has emphasized the FPIC process, most IP and LCs do not have the capacity to effectively participate in the process for a number of reasons. The Forest (clearance) Guidelines (2017, revised 2019) do not adequately provide social compensation for forests lost during infrastructure projects.	Increase IP and LC capacity to participate in infrastructure project planning through NGOs and local government; consider options for revising social compensation guidelines in infrastructure projects
9. Conflict and dispute resolution	Current policies are weak regarding resolution of tenure disputes. Forest law has provided limited access for CFUGs to participate in judicial proceedings, though they can use other general legal measures to do so. Government and CSO capacity to resolve conflicts is low. Community capacity to resolve conflicts informally is generally also considered to be low.	Expand capacity of government, communities, and CSOs for alternative dispute resolution

## POTENTIAL VEHICLES FOR TENURE-RELATED INVESTMENTS<sup>136</sup>

Project Name	Location	Financier	Implementing Partner	Budget (millions, US\$)	Duration
IP and LC in Nepal – Dedicated Grant Mechanism (FIP-DGM)	Provinces 2 and 5	WB	Rural Reconstruction Nepal	4.5	2018-
Forests for Prosperity Project (FPP)	Provinces 2 and 5	WB - FIP	MoFE	24 <sup>137</sup>	2020-2025
ER Program for the Terai Arc Landscape	Terai Arc Landscape	WB	MoFE	~45	2021-NA

## CONSTRAINTS AND/OR RISKS TO TENURE SECURITY

Thematic area/Jurisdiction			Estimated level of impact on tenure reform measures	Potential for in-project or program mitigation
Unclear Constitutional delegation of responsibilities to the various tiers of government	National	The 2015 Constitution introduced federalism into Nepal's governmental architecture. As a result of this recent transition, there is some dis-harmonization between levels of government regarding roles and responsibilities related to community forestry and collective rights.	Moderate	Low
Low capacity of CFUGs to implement SFM	National	Some CFUGs have demonstrated insufficient capacity for sustainable forest management and may require unrealistic levels of support to be sufficiently functional.	High	High
Lack of government willingness at local and provincial levels to engage with legal and regulatory reforms	National	Government policymakers may be unwilling to develop and revise the Forest Act rules and regulations to strengthen IP and LC tenure security.	Moderate	Moderate
Lack of finance available to communities for value addition	National	Communities and CFUGs looking to add value to forest products lack sufficient finance for needed investments in equipment, marketing, and training.	Low	High
Lack of government willingness and capacity to increase support for community forestry and CFUGs	National	Government willingness and capacity at the subnational level (i.e. Division Forest Officers) may be insufficient to benefit from investments related to increasing support for community forestry and CFUGs. Public and private sector technical forestry staff may be unavailable in sufficient numbers to assist with upscaling of community forestry, SFM, and operational plan development.	High	High
Insufficient political economy for expansion of use-rights to more CFUGs	National	Competing land uses in some areas of Nepal may push back against expansion of use-rights to more CFUGs.	Moderate	Low

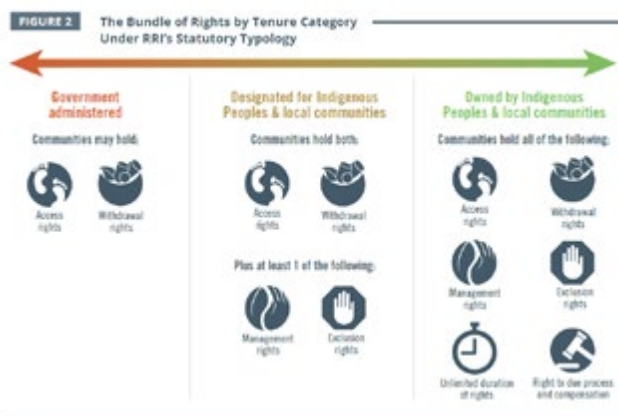
## ENDNOTES

1. Rights and Resources Initiative. 2018. At a Crossroads: Consequential trends in recognition of community-based forest tenure 2002-2017. Accessed at [https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads\\_RRI\\_Nov-2018.pdf](https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads_RRI_Nov-2018.pdf)

2. Rights and Resources Initiative. 2018. At a Crossroads: Consequential trends in recognition of community-based forest tenure 2002-2017. Accessed at [https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads\\_RRI\\_Nov-2018.pdf](https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads_RRI_Nov-2018.pdf)

3. Types of tenure (e.g. bundle of rights) described from Ostrom & Hess. 2007. Private and Commons Property Rights. Workshop in Political Theory and Policy Analysis, Indiana University. Bundle of rights ascertained at Rights and Resources Initiative. 2016. Depth of Rights Consolidated Database. Excel spreadsheet provided by RRI.

4. Tenure types are defined by Rights and Resources Initiative's (RRI) statutory typology:



5. The Government of Indonesia defines Indigenous Peoples as *Masyarakat Hukum Adat* (MHA). The national legislation, Minister of Home Affairs Regulations No. 52/2014 on Guidelines of Recognition and Protection of *Masyarakat Hukum Adat* defines MHA as Indonesian citizens who have distinctive characteristics, live in groups harmoniously according to their customary law, have ties to the ancestral origin and/or similarity in residential location, have a strong relationship with the land and the environment, as well as have a value system which determines their economic system, political, social, cultural, legal and utilize a single region for generations. Even by these guidelines, however, it is difficult to identify which indigenous communities would qualify as MHA. The question of who are MHA or, indigenous peoples, has been addressed several times by Indonesia's Constitutional Court. From their considerations it is clear that, among others, the existence of MHA is dependent on formal recognition by Government. The Constitutional Court has set out to define

indicators that can be used to assess whether the community can or cannot be qualified as MHA. Still, the current indicators have been characterized by some legal scholars as ambiguous and lacking in an opinion on the social unit that can be considered as indigenous, based on the Constitutional Court Decision. Source: Arizona, Yance. 2016. *Masyarakat Hukum Adat Before The Constitutional Court: An analysis of Paul Scholten's Interpretation Method in Contemporary Judicial Development in Indonesia*. Digital Paul Scholten Project, University of Amsterdam; and IEAD, 2018. *Social Environmental and Climate Assessment Review Note, Republic of Indonesia – Integrated Management of Peatland Landscapes*.

6. Siscawati M, Banjade MR, Liswanti N, Herawati T, Mwangi E, Wulandari C, Tjoa M and Silaya T. 2017. Overview of forest tenure reforms in Indonesia. Working Paper 223. Bogor, Indonesia: CIFOR. Accessed at [https://www.cifor.org/publications/pdf\\_files/WPapers/WP223Siscawati.pdf](https://www.cifor.org/publications/pdf_files/WPapers/WP223Siscawati.pdf)

7. About 2,300 of these villages correspond to the World Bank's definition of Indigenous Peoples.

8. MoF 2007, 2009

9. CIFOR, 2020

10. The Constitutional Court Of The Republic Of Indonesia. Decision Number 35/PUU-X/2012. May 16, 2013. Accessed at [https://www.forestpeoples.org/sites/default/files/news/2013/05/Constitutional\\_Court\\_Ruling\\_Indonesia\\_16\\_May\\_2013\\_English.pdf](https://www.forestpeoples.org/sites/default/files/news/2013/05/Constitutional_Court_Ruling_Indonesia_16_May_2013_English.pdf)

11. Simarmata, R., and Sasmita, T. 2021. Self-Determined Land Rights in Indonesia: A Review on Various Tenure Recognition Options. Forest Peoples Program. 23 February 2021. Accessed at [https://www.forestpeoples.org/sites/default/files/documents/Tenure%20options%20-%20Final%20Report\\_English.pdf](https://www.forestpeoples.org/sites/default/files/documents/Tenure%20options%20-%20Final%20Report_English.pdf)

12. US\$1.01 billion at current exchange rates

13. US\$33.7 million at current exchange rates

14. AMAN is a network of 2,422 indigenous communities across Indonesia, comprising a population of about 17 million people. The KPA represents small farmers, fisherman, and IPs. The BRWA establishes and promotes standards for community mapping and documentation, and acts as a single reference for community maps; it registers, verifies, and certifies participating communities' claims, and facilitates access to community mapping services if the community lacks its own map.

15. The table below summarizes the number of individual community cases, as well as the total area involved with those cases, for each of the JKPP and the BRWA, country-wide. The data presented was accessed on April 6, 2021. To try and better understand the degree of overlap, the cases and

areas of customary forests (*Hutan Adat*) in East Kalimantan (location of the World Bank's FCPF-financed project) recorded by each were reviewed. JKPP reports 14 cases, covering 210,708 hectares. BRWA reports 12 cases, covering 240,282 hectares. At the level of geographical place names (i.e., it is not known if the place names actually correspond to the same number of involved households/villages and/or definition of “community”), there are 11 cases found in each of the two databases, listed under the same place name. However, the total areas reported under these 11 cases differs significantly between the two. The JKPP database reports 168,399 hectares between these 11, whereas the BWRA database reports 228,817 hectares.

Category	# of cases / millions of hectares			
	Land For Agrarian Reform	Social Forestry	Customary (adat) Forest	Total
<b>Indonesian Community Mapping Network (JKPP)</b>				
All	60 / 0.15	2,575 / 3.0	760 / 8.0	3,395 / 11.2
Potential	1 / 0.0004	0 / 0	582 / 6.0	583 / 6.0
Proposed	58 / 0.15	47 / 0.70	100 / 1.0	645 / 2.0
In Process	1 / 0.00001	2,088 / 2.0	78 / 0.90	2,167 / 3
<b>Indigenous Territory Registration Body (BRWA)</b>				
All	–	–	685 / 11.2	685 / 11.2
New Registrations	–	–	175 / 1.93	175 / 1.93
Registered	–	–	446 / 7.80	446 / 7.80
Verified	–	–	39 / 0.91	39 / 0.91
Certified	–	–	28 / 0.57	28 / 0.57

16. Sources: Progress in submitting maps: pers. comm. Abdon Nababan, Deputy Chairman, AMAN's National Council; Customary Territory Map and statistics on *adat* territorial claims: BRWA, 2021. Accessed at <https://brwa.or.id/sig/>; Area of *adat* lands formalized by GoI: Rukka Sombolinggi, Secretary General, AMAN, March 17, 2021. Accessed at <https://www.aman.or.id/2021/03/pidato-sekretaris-jendral-aliansi-masyarakat-adat-nusantara-dalam-perayaan-hkman-2021-22-tahun-aman/>



17. Ministry of Environment and Forestry, 2020. The State of Indonesia's Forests 2020. Ministry of Environment and Forestry, Republic of Indonesia. Accessed at [https://indonesianembassy.de/wp-content/uploads/2020/12/Lowres2-SOFO-2020-B5\\_ENG-12.24.2\\_compressed.pdf](https://indonesianembassy.de/wp-content/uploads/2020/12/Lowres2-SOFO-2020-B5_ENG-12.24.2_compressed.pdf)

18. While *adat* forest is specifically included by MoEF as being within the scope of Social Forestry, in practice there are fundamental differences of forest legal status and tenure type between *adat* Forest and the Social Forestry schemes.

19. Ministry of Environment and Forestry, 2020. The State of Indonesia's Forests 2020. Ministry of Environment and Forestry, Republic of Indonesia. Accessed at [https://indonesianembassy.de/wp-content/uploads/2020/12/Lowres2-SOFO-2020-B5\\_ENG-12.24.2\\_compressed.pdf](https://indonesianembassy.de/wp-content/uploads/2020/12/Lowres2-SOFO-2020-B5_ENG-12.24.2_compressed.pdf)

20. According to the media review carried out for this report, there are allegations in the media that the mapping process has been closed to the public and that its datasets are primarily sourced from the government, leading to the exclusion of Indigenous Peoples and local communities customary rights. For example, see <https://www.aseantoday.com/2020/10/how-indonesias-national-mapping-project-got-off-course/>.

21. WRI Indonesia, 2019. See <https://wri-indonesia.org/en/blog/one-map-removing-overlapping-land>

22. e.g., The Economist, 10/07/2020 See <https://www.economist.com/asia/2020/10/15/how-not-to-reform-indonesia>

23. The review used Bahasa Indonesian key words to ascertain the focus and extent of media coverage about land and forest rights of Indigenous Peoples and local communities in Indonesia. Over 1,000 articles that were published in 2020 were examined, of which 239 were taken as the basis for the analysis

24. Indonesian Laws and regulations refer to *adat* rights based on Government recognition to an Indigenous community group as Legally Recognized *Adat* Community (*Masyarakat Hukum Adat*). Such a legal recognition falls within the realm of broader National Unity and Politics (*Kesatuan Bangsa dan Politik*) along with recognition of other civic rights. The jurisdiction for *Adat* recognition rests within the Local and Provincial



governments (not under land administration or forest management).

Source: World Bank, 2018. Indonesia Program To Accelerate Agrarian Reform – Executive Summary Of The Environmental And Social Management Framework (ESMF) *Indonesia: Accelerating Agrarian Reform-ATR/BPN and BIG-ESMF-2018*, Accessed at <http://documents1.worldbank.org/curated/en/518031528141380048/pdf/Indonesia-Acceleration-Program-of-Agrarian-Reform-and-One-Map-Policy-Implementation-ESMF-Executive-Summary-06012018.pdf>

25. The summary analysis presented in Annex 1, done by the Forest Peoples Program (Simarmata & Sasmita, 2021), provides a good overview of the range of options that can be considered as an alternative for tenure recognition. These range from public instruments (e.g. District Head Decree and Regional Regulations), as well as a private ones (e.g. Evidence of Rights, such as a tax receipt or a reference letter from the village head). Besides the formal options, the analysis also looks at non-state mechanisms such as Agreements between a Community and a Government/Corporation or private transfer of rights (sale and purchase or lease). These options, with their various advantages and disadvantages, have been applied in many places and so provide insight into the various degrees of tenure security they confer. For *adat* communities these diverse options would not necessarily all bring a significant improvement in their control and tenure security. Thus the authors' goal was to broadly assess the advantages and disadvantages of each tenure alternative for *adat* and local communities so that communities could consider their range of options and choose the most appropriate recognition strategy and tenure model for their particular condition and aspiration.

26. One of the more widely used sources to identify *adat* such communities is the consolidated map of indigenous territories developed by BRWA (the Customary Land Registration Agency—Badan Registrasi Wilayah Adat/BRWA). BRWA has maps of indigenous territories and follows them through the customary territorial registration process, which includes the stages of registration, verification, validation and publication. The maps has been be by World Bank projects to identify the existence of indigenous communities within the project implementation area. In East Kalimantan the BWRA map shows 12 communities, claiming some 240,000 ha. See <https://brwa.or.id/sig/>

27. The J-SLMP also has in its IPPF the aspiration to “[facilitate] *recognition of Adat communities...through participatory and inclusive land tenure mapping and development planning...*”. In Jambi, the BWRA map lists 3 *adat* communities with registered claims to 28,000 ha, and 7 newly registered claims waiting

review. The JKPP map lists 35 *Hutan Adat* claims in Jambi to some 310,000 ha

28. Seymour, F., Aurora, L., and J. Arif. 2020. The Jurisdictional Approach in Indonesia: Incentives, Actions, and Facilitating Connections. Policy and Practice Reviews. published: 09 November 2020. doi: 10.3389/ffgc.2020.503326

29. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

30. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

31. Rights and Resources Initiative. 2017. Power and Potential – A comparative analysis of national laws concerning women's rights to community forests. Accessed at [https://rightsandresources.org/wp-content/uploads/2017/05/Power\\_and\\_Potential\\_Final\\_EN\\_May\\_2017\\_RRI-1.pdf](https://rightsandresources.org/wp-content/uploads/2017/05/Power_and_Potential_Final_EN_May_2017_RRI-1.pdf)

32. Source: <https://rightsandresources.org/en/blog/indonesia-land-allocation-policies-practices-favor-corporations-communities/#.XwYJJsIPw2w>

33. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

34. Tables from Source: Simarmata, R., and Sasmita, T. 2021. Self-Determined Land Rights in Indonesia: A Review on Various Tenure Recognition Options. Forest Peoples Program. 23 February 2021. Accessed at [https://www.forestpeoples.org/sites/default/files/documents/Tenure%20options%20-%20Final%20Report\\_English.pdf](https://www.forestpeoples.org/sites/default/files/documents/Tenure%20options%20-%20Final%20Report_English.pdf)

35. Ownership of all land is public as established in Viet Nam's Constitution (Article 53), which states the “*land, water resources, mineral resources, resources in the sea and airspace, other natural resources and property invested and managed by the State are public properties, coming under ownership of the entire people represented and uniformly managed by the State*”. The Constitution and the Land Law (2013) recognize the right of organisations and individuals to be assigned or leased land and to have their land use right recognized by the State through the grant of a land use right certificate.

Viet Nam's Constitution. See [https://constitutionnet.org/sites/default/files/tranlation\\_of\\_vietnams\\_new\\_constitution\\_enuk\\_2.pdf](https://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf)

Land Law, 2013. See: [http://web.archive.org/web/20180507020809/http://www.itpc.gov.vn/investors/how\\_to\\_invest/law/Law\\_on\\_land/mldocument\\_view/?set\\_language=en](http://web.archive.org/web/20180507020809/http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_land/mldocument_view/?set_language=en)



36. Source: GSO, 2021 (2017 data) “Users include domestic organizations, households, and individuals; communities; religious institutions; foreign organizations with diplomatic functions; Overseas Vietnamese, and foreign-invested enterprises. “Managers” not formally defined but, according to CIFOR (Pham et al, 2019) data, the majority (43%) would refer to Forestry Land administered by State Forest Enterprises (with about 60% of “managed” Forestry Land), non-state forest enterprises, 100% foreign invested enterprises, Armed Forces, and others. (ibid).

GSO, 2021. See [https://www.gso.gov.vn/default\\_en.aspx?tabid=773](https://www.gso.gov.vn/default_en.aspx?tabid=773)

Pham TT, Hoang TL, Nguyen DT, Dao TLC, Ngo HC and Pham VH. 2019. *The context of REDD+ in Viet Nam: Drivers, agents and institutions 2nd edition*. Occasional Paper 196. Bogor, Indonesia: CIFOR.

37. Source: Pham et al, 2019. Date as of 2016. “Communities” defined by Forest Law (2017) as people “*living in the same village, hamlet, or residential area and having the same customs*”. Since the early 1950s, Vietnamese government nationalized agricultural & forest land throughout the country. While agricultural land was de-collectivized since mid-1980s, the majority of forest and forest land continued to be managed by state enterprises (SFEs) relatively recently (Wells-Dang, et al, 2016)

Forest Law, 2017, See: <https://bandolamngheip.com/luat-lam-ngheip-2017-english-law-on-forestry-2017-english-version/>

Wells-Dang, A., Pham Quang Tu, And Ngo Van Hong. 2016. Reform State-Owned Forest Enterprise and Ethnic Minority Land Tenure Security In Viet Nam. Oxfam/Viet Nam and Centre for Indigenous Knowledge Research and Development/Viet Nam. Paper prepared for presentation at the “2016 World Bank Conference On Land And Poverty”. The World Bank - Washington DC, March 14-18, 2016.

38. FCPF REDD+ Jurisdiction Provinces (north-central Viet Nam) – Outlined and highlighted in red



39. Types of tenure (e.g., bundle of rights) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries’ National Legislation on Community and Indigenous Peoples’ Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whatrightsnovember13final.pdf>

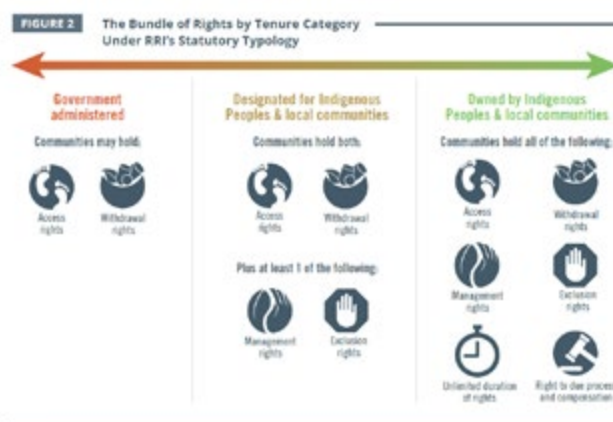
Bundle of rights determined from RRI. 2016. Depth of Rights Consolidated Database. Excel spreadsheet provided by RRI.

40. ForestLaw on Forestry 2017, See: <https://bandolamngheip.com/luat-lam-ngheip-2017-english-law-on-forestry-2017-english-version/>

41. Source: Pham et al, 2019

42. FAO and MRLG. 2019. Challenges and opportunities of recognizing and protecting customary tenure systems in Viet Nam. Bangkok, 12 pp. Licence: CC BY-NC-SA 3.0 IGO. <http://www.fao.org/3/CA1037EN/ca1037en.pdf>

43. Tenure types are defined by Rights and Resources Initiative’s (RRI) statutory typology:



44. Viet Nam’s Constitution (Article 54) provides that land use rights may be taken back by the State “*in imperative cases provided by the law for the purposes of national defence, national security and socio-economic development in the national and public interests*” through due process (i.e., “*The recovery of land must be public, transparent and compensations must be provided in concordance to the law.*”), except when “*urgent demands and extreme necessity with respect to the implementation of the businesses of national defence, national security, or wars, emergency, prevention of and protection against natural calamities.*” allow for expropriation by the State without due process, but return and/or compensation is required afterwards. Chapter VI of the Land Law (2013) regulates land recovery, land requisition, compensation, support and resettlement. It stipulates that land may be recovered by the state for national defense or security purpose, for socio-economic development in the national or public interest, for violations of the land law, if the land use category for which the land was given is changed by law; and requisitioned during a national emergency. See: <http://extwprlegs1.fao.org/docs/pdf/vie167592.pdf>

45. By law, compensation for expropriated land must correspond to market price. In practice, however, specific procedures for assessing market value are lacking. Inadequate compensation is a source of widespread grievance that sometimes leads to violence. (USAID, 2013. Country Profile: Property Rights And Resource Governance – Vietnam) See [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Vietnam\\_Profile.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Vietnam_Profile.pdf)
46. MARD, 2019. Benefit Sharing Plan Of The Program On Emissions Reductions In North Central Region Of Viet Nam For The Period 2019-2024. Ministry of Agriculture and Rural Development. See <http://documents.worldbank.org/curated/en/676631550223032222/pdf/BSP-version-of-Jan-19.pdf>
47. MARD, 2018a. FCPF Emission Reduction Program Viet Nam Ethnic Minority Planning Framework. See <http://documents.worldbank.org/curated/en/759811549016259893/pdf/EMPF-Viet-Nam-November-4-2018.pdf>
48. Source: Pham et al, 2019
49. World Bank, 2019. Country Forest Note Viet Nam. See <http://documents.worldbank.org/curated/en/544891570456214844/pdf/Viet-Nam-Country-Forest-Note.pdf>
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51. World Bank, 2019. Country Forest Note Viet Nam. See <http://documents.worldbank.org/curated/en/544891570456214844/pdf/Viet-Nam-Country-Forest-Note.pdf>
52. World Bank, 2019. Country Forest Note Viet Nam. See <http://documents.worldbank.org/curated/en/544891570456214844/pdf/Viet-Nam-Country-Forest-Note.pdf>
53. Source: Pham et al, 2019.
54. USAID. 2013. Country profile country profile property rights and resource governance: Vietnam. Washington DC, United States Agency for International Development. See [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Vietnam\\_Profile.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Vietnam_Profile.pdf)
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58. Source: Pham et al, 2019.
59. Source: Pham et al, 2019.
60. CIFOR, 2019. (NN TO REVIEW – there is no CIFOR 2019 citation in foodnotes/endnotes – only CIFOR 2020)
61. The review used Vietnamese key words to ascertain the focus and extent of media coverage about land and forest rights of Indigenous Peoples and local communities in Indonesia. Over 300 articles that were published in 2020 were examined, of which 65 were taken as the basis for the analysis.
62. FCPF/TAP, 2018. Technical Assessment of the Final Emission Reduction Program Document (ER-PD) submitted by Vietnam on November 19th 2017. See [https://www.forestcarbonpartnership.org/system/files/documents/Vietnam%20ER-PD%20TAP%20January%2025%202018%20Report\\_0.pdf](https://www.forestcarbonpartnership.org/system/files/documents/Vietnam%20ER-PD%20TAP%20January%2025%202018%20Report_0.pdf)
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64. World Bank, 2019. Country Forest Note Viet Nam. See <http://documents.worldbank.org/curated/en/544891570456214844/pdf/Viet-Nam-Country-Forest-Note.pdf>
65. FCPF/TAP, 2018. Technical Assessment of the Final Emission Reduction Program Document (ER-PD) submitted by Vietnam on November 19th 2017. See [https://www.forestcarbonpartnership.org/system/files/documents/Vietnam%20ER-PD%20TAP%20January%2025%202018%20Report\\_0.pdf](https://www.forestcarbonpartnership.org/system/files/documents/Vietnam%20ER-PD%20TAP%20January%2025%202018%20Report_0.pdf)
66. Source: Pham et al, 2019.
67. FAO and MRLG. 2019. Challenges and opportunities of recognizing and protecting customary tenure systems in Viet Nam. Bangkok, 12 pp. Licence: CC BY-NC-SA 3.0 IGO. <http://www.fao.org/3/CA1037EN/ca1037en.pdf>
68. As noted by Bayrak and Marafa (2020), the potential for success and impact at the level of the communities themselves will likely depend to a significant extent on support from policymakers and development practitioners to sufficiently ‘localize’ or embed REDD+ in local forest governance landscapes and existing CBFM schemes versus the more commonplace one size-fits-all approach to CBFM, which

deters local communities from developing grassroots-based CBFM initiatives or to revive ‘customary’ CBFM. See Bayrak, M.M., and Marafa, L.M., 2020. REDD+ as a Vehicle for Community-Based Forest Management? Critical Insights from Vietnam. *Small-scale Forestry* 19, 57–81 (2020). <https://doi.org/10.1007/s11842-020-09432-x>

69. While it is quite clear that there are neither Constitutional nor legal recognition of customary land or ethnic minority rights in Viet Nam, the 2017 Forest Laws acknowledgement of the importance of “*religious and customary forests and the need to respect them... (and) the living space, customs and habits of the community... of people who have customs, traditions, culture, beliefs and traditions attached to forests*” is arguably a tacit acceptance that such exist, even if they have no definitive force in law. In addition, it has been noted that in practice, the recognition of customary land can depend on the acceptance by the local authorities. However, as state administrators and local authorities tend to be unaware of the local customary systems for managing resources, as well as the legal options for allocating land to communities (FAO and MRLG, 2019), the option to take advantage of the existing traditional governance structures and exercise legal options for the allocation of collectively used land than itself is overlooked

70. In the Central Highlands, question of FPIC and ethnic minority peoples access to their traditional forest areas will be even more sensitive a topic, though approaching it through the lens of the ACMAFs and FMCs, would likely help to defuse political sensitivities.

71. CIFOR, 2019.

72. CIFOR, 2019.

73. FAO and MRLG. 2019. Challenges and opportunities of recognizing and protecting customary tenure systems in Viet Nam. Bangkok, 12 pp. Licence: CC BY-NC-SA 3.0 IGO. <http://www.fao.org/3/CA1037EN/ca1037en.pdf>

74. UN-REDD, 2018. Positioning Ethnic Minorities As Key Partners In Forest Supply Chains In Viet Nam. Norwegian Ministry of Climate and Environment & UN-REDD. Accessed at <https://www.unredd.net/documents/global-programme-191/stakeholder-engagement-295/publications-on-indigenous-peoples-rights-2741/17098-positioning-ethnic-minorities-as-key-partners-in-forest-supply-chains-in-viet-nam.html>

75. One possible model for such a study are the “Indigenous Peoples Notes”, done by the World Bank’s Central American Country Department in the late 1990s. Because of not dissimilar difficulties brought on by institutional and cultural biases, the Bank’s Social Team carried out a one year study across the major ethnic groups in the region, engaging with leaders and representatives to have them articulate such things as their visions of what constituted “development” from

their perspective, how specifically they wished to be engaged during the project cycles, how development processes and services should be delivered to their people, and what were the appropriate entry points and first steps. These notes served to inform the World Bank’s rural development portfolio in the Central American region over a 5 year investment cycle.

76. The following include recommendations from FAO and MRLG, 2019; World Bank, 2019; and authors.

77. Implementation of Decree No. 118/2014/ND-CP on the Implementation of Resolution No. 30-NQ/TW, which defines the categories of land to be transferred to communities, households and local authorities, and provides highest priority to land allocation to local ethnic minorities who lack land for production. Furthermore, the decree abolishes the practice of lending or leasing state land to companies, and prescribes the re-allocation of such areas to local authorities.

78. The provincial Socioeconomic Development Plan is the primary strategic document for the provincial government to implement all socio-environmental-economic activities during the period of five years (2021-2025). The SEDP, with its various sectoral plans, provides the basis for government work planning and budgeting, which makes it essential that the proposed priorities, interventions, and measures be prominently incorporated into SEDP if they are to be implemented at all.

79. The Land Law (2013) already provides a good basis for land allocation to communities; what is lacking is its widespread implementation (FAO and MRLG, 2019)

80. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

81. Medium-large projects (=significant) are those over US\$1 million in size, include direct project expenditures and administration. Projects listed include a significant component devoted to strengthening community-based collective land tenure.

82. Includes major Official Development Assistance (ODA) disbursement flows, including bilateral donor agency, multilateral agency and private donor disbursements. Combined disbursements over 2018-2019 period of >US\$1m are included. Multilateral agencies are shown in red, bilateral and country donors are shown in blue and labeled by country. For details about the data, see <https://stats.oecd.org/qwids/about.html>. For a complete list of reporting institutions see Annex XX. Data accessed from: <https://stats.oecd.org>.

83. FCPF, June 2019. Emission Reduction Program Document. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20MASTER\\_v8\\_clean16619.pdf](https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20MASTER_v8_clean16619.pdf)

84. FCPF. June 2019. Emission Reduction Program Document. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20\\_MASTER\\_v8\\_clean16619.pdf](https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20_MASTER_v8_clean16619.pdf)
85. Tenure data obtained from literature review. Types of tenure (e.g., bundle of rights) described according Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whatrightsnovember13final.pdf>
86. Carbon ownership is expected to be legally clarified and strengthened with the Climate Change Bill expected to be pass soon (under consultation).
87. In most cases, lands are held by the Mataqali. However, in the provinces of Ba and Nadroga, ownership can be with the Tokatoka, a subunit of the Mataqali. Rarely, ownership is registered under larger units, the Yavusa, or groups of Yavusa. See figure on traditional Fijian governance in text and iTaiki Land Trust Board. Land Ownership in Fiji. Brochure. Accessed at [https://www.tltb.com.fj/getattachment/Media/Brochures/Land-Ownership-in-Fiji-Booklet-\(1\).pdf.aspx?lang=en-US](https://www.tltb.com.fj/getattachment/Media/Brochures/Land-Ownership-in-Fiji-Booklet-(1).pdf.aspx?lang=en-US)
88. There has been criticism of the legal regime in Fiji as regarding whether full ownership of lands by Indigenous Peoples is realized given the complete control by the TLTB, itself a construct of British colonial rule. For more of an explanation of the origins and powers of the TLTB (referred to in this source as iTLBT or NLTB), see Lally, H. 2018. Fiji: Various Issues of Alienation of Land Through Failed Land Tenure & Policy. Asian Pacific Law and Policy Journal 19(2):69-83. Accessed at [http://blog.hawaii.edu/aplpj/files/2018/04/APLPJ\\_19.2\\_Lally.pdf](http://blog.hawaii.edu/aplpj/files/2018/04/APLPJ_19.2_Lally.pdf)
89. FCPF. June 2019. Emission Reduction Program Document. Accessed at [https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20\\_MASTER\\_v8\\_clean16619.pdf#page=78](https://www.forestcarbonpartnership.org/system/files/documents/Final%20ER-PD%20Fiji%20_MASTER_v8_clean16619.pdf#page=78)
90. Government of the Republic of Fiji. 2017. Climate Vulnerability Assessment – Making Fii Climate Resilient. Accessed at <https://openknowledge.worldbank.org/bitstream/handle/10986/28870/120756-WP-PUBLIC-nov-9-12p-WB-Report-FA01-SP.pdf?sequence=1&isAllowed=y>
91. Sangeeta Mangubhai and Ruci Lumelume. 2019. Achieving forest conservation in Fiji through payment for ecosystem services schemes. Pacific Conservation Biology 25(4) 386-393 Accessed at <https://doi.org/10.1071/PC18057> and <http://islandarks.com.au/files/2017/12/Achieving-Forest-Conservation-in-Fiji-through-Payment-for-Ecosystem-Services-Schemes-A-case-study-from-Kilaka-Forest.pdf>
92. Singh, Ronald. 2019. Culture, Law and Land Tenure: Challenges to Wealth Creation & Maximization for Rural & Indigenous Communities in Fiji”. University of Fiji School of Law. Accessed at [https://www.researchgate.net/publication/341651380\\_Culture\\_Law\\_And\\_Land\\_Tenure\\_Challenges\\_To\\_Wealth\\_Creation\\_And\\_Maximization\\_For\\_Rural\\_Indigenous\\_Tribal\\_Communities\\_In\\_Fiji](https://www.researchgate.net/publication/341651380_Culture_Law_And_Land_Tenure_Challenges_To_Wealth_Creation_And_Maximization_For_Rural_Indigenous_Tribal_Communities_In_Fiji)
93. TEBTEBBA. 2019. Report on Mainstreaming Gender into Fiji's REDD+ and Emissions Reduction Program (ER-P) for Forest-Dependent Peoples. Accessed at <http://documents1.worldbank.org/curated/en/183731580929144077/pdf/Mainstreaming-Gender-for-Forest-Dependent-Peoples.pdf>
94. Lally, H. 2018. Fiji: Various Issues of Alienation of Land Through Failed Land Tenure & Policy. Asian Pacific Law and Policy Journal 19(2):69-83. Accessed at [http://blog.hawaii.edu/aplpj/files/2018/04/APLPJ\\_19.2\\_Lally.pdf](http://blog.hawaii.edu/aplpj/files/2018/04/APLPJ_19.2_Lally.pdf)
95. World Bank. 2017. Republic of Fiji – Systematic Country Diagnostic. Report No. 116491-FJ. Accessed at <https://openknowledge.worldbank.org/bitstream/handle/10986/28541/120106-SCD-P160757-PUBLIC-FijiSCDpostDecisionclean.pdf?sequence=5&isAllowed=y>
96. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.
97. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.
98. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.
99. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)
100. Only projects over US\$1 million in size are included, include direct project expenditures and administration.
101. Rights and Resources Initiative. 2018. At a Crossroads: Consequential trends in recognition of community-based forest tenure 2002-2017. Accessed at [https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads\\_RRI\\_Nov-2018.pdf](https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads_RRI_Nov-2018.pdf)
102. Before the 2019 Land Law, Land Survey Certificates (also referred to as Temporary Land Use Certificates for Communal Land) and Land Titles were the only statutory legal tenure



instruments to secure rights for communities. However, they were infrequently used by communities. Preliminary analysis indicates that the 2019 Land Law subsumed both regimes under a new framework: “Use of State Lands for Collective Purposes.” The previous collective tenure regimes are retained in this report until an updated analysis of community-based tenure regimes in Lao PDR is completed.

Village-level land use plans and village forest management plans provide some measure of de facto tenure security, though they are largely unrecognized by the legal framework with regards to land. As such, they are detailed in the text but not included as tenure categories above.

103. Preliminary analysis suggests that these tenure regimes may presently be obsolete with the revision of the Land Law (2019). These types of tenure (e.g., bundle of rights) described from Rights and Resources Initiative. 2016. Depth of Rights Consolidated Database. Excel spreadsheet provided by RRI.

104. Rights and Resources Initiative. September 2015. Who Owns the World’s Land? A global baseline of formally recognized indigenous and community land rights. Accessed at [https://rightsandresources.org/wp-content/uploads/GlobalBaseline\\_web.pdf](https://rightsandresources.org/wp-content/uploads/GlobalBaseline_web.pdf)

105. Some authors identify more than 230 different ethnic groups. See Ironside, J. 2017. The Recognition of Customary Tenure in Lao PDR. MRLG Thematic Study Series #8. Vientiane: MRLG.

106. In discussions of tenure in Lao PDR, the following conventions typically apply: collective = belonging to an association; communal = belonging to an ethnic group.

107. FCPF. May 18, 2018. Promoting REDD+ through Governance, Forest Landscapes & Livelihoods in Northern Lao PDR. Emission Reduction Program Document (ER-PD) – Lao PDR.

108. FCPF. May 18, 2018. Promoting REDD+ through Governance, Forest Landscapes & Livelihoods in Northern Lao PDR. Emission Reduction Program Document (ER-PD) – Lao PDR.

109. Personal communication Dr. Luck Bounmixay, Natural Resources Specialist, World Bank, 25 August 2020. As explained by Dr. Luck, users organize themselves around paddy, livestock systems, freshwater fisheries, etc. These are scattered throughout the landscape. In addition, villages are almost inevitably connected to intact forests (i.e., state forests) that are not included in the VLUPs as only degraded forest lands are included in these, not “good” forest. This is consistent with experiences in other parts of the world where a narrow focus on “resolving customary forest rights” through identification and planning that focuses only forest resources rather than on the community’s land resources tends to lead to weak and confused governance of land and natural resources

(as well as conflicts) and undermines broader sustainable land management goals and opportunities.

110. Luck Bounmixay. 2015. Communal Land Tenure: A Social Anthropological Study in Laos. A Thesis Submitted in Fulfillment of the Requirements for the Degree of Doctor of Social Anthropology, Faculty of Philosophy, University of Murcia, Spain. May 2015

111. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

112. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

113. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

114. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR’s Analytical Framework. See World Bank. 2019. Securing Forest Tenure Rights for Rural Development – An Analytical Framework. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

115. See Rights and Resources Institute. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

116. Mekong Region Land Governance. 2019. Land Tenure Security in ‘70 Percent Forestland Policy’ of the Lao PDR. Discussion Note. Accessed at <https://mrlg.org/wp-content/uploads/2019/09/Laos-70-Forest-Coverage-17-September.pdf>

117. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

118. Rights and Resources Initiative. 2018. At a Crossroads: Consequential trends in recognition of community-based forest tenure 2002-2017. Accessed at [https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads\\_RRI\\_Nov-2018.pdf](https://rightsandresources.org/wp-content/uploads/2019/03/At-A-Crossroads_RRI_Nov-2018.pdf)

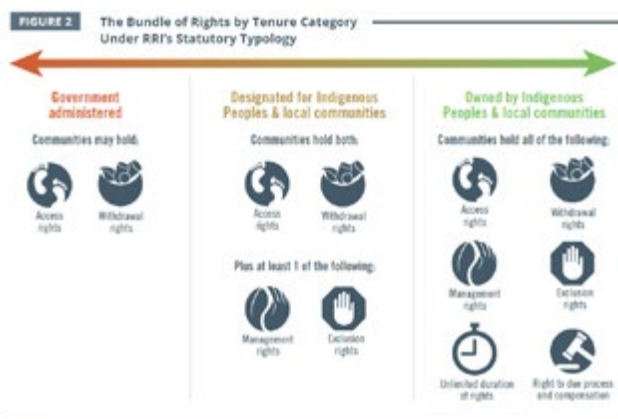
119. World Bank. February 26, 2021. Press Release – Nepal and World Bank Sign Innovative Financing Agreement on Forests and Climate Change for Building Back Greener. Accessed at <https://www.worldbank.org/en/news/press-release/2021/02/26/nepal-and-world-bank-sign-innovative->

financing-agreement-on-forests-and-climate-change-for-building-back-greener

120. Types of tenure (e.g., bundle of rights) described from Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Accessed at <https://rightsandresources.org/wp-content/exported-pdf/whattrightsnovember13final.pdf>

2016. Depth of Rights Consolidated Database. Excel spreadsheet provided by RRI.

121. Tenure types are defined by Rights and Resources Initiative's (RRI) statutory typology:



122. Oldekop, J.A., Sims, K.R.E., Karna, B.K. *et al.* Reductions in deforestation and poverty from decentralized forest management in Nepal. *Nat Sustain* **2**, 421–428 (2019). <https://doi.org/10.1038/s41893-019-0277-3>

123. Gritten, D., Paudel, N.S., Luintel, H., and Janakiraman, M. 2014. Enabling Forest Users in Nepal to Exercise Their Rights: Rethinking Regulatory Barriers to Communities and Smallholders Earning their Living from Timber. In book: *Forests under pressure - Local Responses to global issues*, IUFRO World Series Volume 32, Chapter: 16. IUFRO; and World Bank. 2020. *Forests For Prosperity*. Project Appraisal Document

124. UNCDF. February 26, 2019. "Is Lack of Access to Finance Impeding the Growth of Female-Led Small Businesses in Nepal?" Blog entry accessed at <https://www.uncdf.org/article/4358/is-lack-of-access-to-finance-impeding-the-growth-of-female-led-small-businesses-in-nepal>

125. As of March 2020, Provinces 2 & 5 have drafted Provincial Forest Acts and Bagmati province has passed its own act. Some 50-100 local governments are in the process of drafting, and 25 may have already passed, their own forest acts.

126. Hobley, M. & Y. Malla. 2020. *Forests and the Federal System: Institutional Assessment of Forest Sector – Inception Phase*. Draft.

127. World Bank. June 26, 2020. Project Appraisal Document – *Forests for Prosperity Project*, Nepal. Accessed at <http://documents1.worldbank.org/curated/en/321361593224078698/pdf/Nepal-Forests-for-Prosperity-Project.pdf>

128. The scale of investments is a relative measure within this specific country context. Because country/subnational jurisdiction size, population and context differs significantly, comparisons of scale across countries cannot be inferred from this estimate.

129. Time-frame categories include the estimated duration of investments and/or project implementation (investments/activities may be ongoing): <2 years = Short-term; 2-7 years = Medium-term; and, >7 years = Long-term.

130. Country findings are informed from literature review, interviews with key stakeholders and experts and the electronic questionnaire.

131. Key Elements of Tenure Security are explained in detail in the World Bank-PROFOR's Analytical Framework. See World Bank. 2019. *Securing Forest Tenure Rights for Rural Development – An Analytical Framework*. PROFOR. Accessed at [https://www.profor.info/sites/profor.info/files/PROFOR\\_SecuringForestTenureRights\\_0.pdf](https://www.profor.info/sites/profor.info/files/PROFOR_SecuringForestTenureRights_0.pdf)

132. For more details on women's rights under Nepal's community-based tenure regimes, see Rights and Resources Initiative. 2017. *Power and Potential – A comparative analysis of national laws concerning women's rights to community forests*. Accessed at [https://rightsandresources.org/wp-content/uploads/2017/05/Power\\_and\\_Potential\\_Final\\_EN\\_May\\_2017\\_RRI-1.pdf](https://rightsandresources.org/wp-content/uploads/2017/05/Power_and_Potential_Final_EN_May_2017_RRI-1.pdf)

133. Rights and Resources Institute. 2020. Estimate of the area of land and territories of Indigenous Peoples, local communities, and Afro- descendants where their rights have not been recognized – Technical Report. Accessed at <https://rightsandresources.org/wp-content/uploads/2020/09/Area-Study-Final-1.pdf>.

134. FAO. 2016. *Forest Tenure Policies in Nepal: Status, Gaps and Way Forward*. Accessed at <http://www.fao.org/3/a-i6247e.pdf>

135. NEFIN, cited by Maharjan, Kabin. 2016. Land Contestation in Nepal: Indigenous Land Tenure and National Land Policy. *New Journal of Social Science and Public Policy*. Vol. 4(1), pp. 120-141. South Asia Institute of Advanced Studies. Accessed at <http://www.nepalpolicy.net/new/wp-content/uploads/2015/02/Kabin-Maharjan-1.pdf>

136. Only projects over US\$1 million in size are included, include direct project expenditures and administration.

137. Includes US\$ 17.9m loan