Update on Forest Tenure
Some Progress Underway, Opportunities to Accelerate + Scale-up

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1. Good news – global progress

2. Bad news – inadequate, growing pressures on forests make it even more urgent

3. What’s next? – Find and implement some new, bolder ideas to accelerate and scale-up effort
“What Rights” Study

• Asked: what are the legal regimes governing community and IP forests and lands; and what rights do they accord?
• Examined 59 forest and land laws (over 170 legal documents)
• Legal analysis by over 90 international legal experts
• When interpreting the data we use best-case scenario.

• Caveat: law on paper DOES NOT mean law on the ground
27 Countries; 75% of the Forests in Developing + Middle Income Countries

Identified 59 community forest tenure regimes
Lots of legislation strengthening community and indigenous land and forest rights after Rio 1992

Source: Forest tenure database. See www.rightsandresources.org/tenuredata.
Area of forest recognized as owned or controlled by Indigenous Peoples and communities increased from 21% – 31%.

Major Progress! But is it Real?

Note: The countries included here contain 80 percent of the total forest estate of developing countries. For full details see: www.rightsandresources/tenuredata.
The Bundle of Rights in 59 Regimes, 27 Tropical Countries, 75% of Tropical Forests

Source: Forest tenure database. See www.rightsandresources.org/tenuredata.
Key Findings – Good news, Bad news

- Just under half of the regimes (27 of 59) **do not recognize** the rights of IPs and communities to **access, commercial exploitation, and forest resource management**.

- 36% of the surveyed tenure regimes **do not recognize the right** of IPs and communities **to exclude** others from their forest lands.

- In 19 regimes, **the government does not need to comply with due process and provide adequate compensation** should it decide to revoke a community’s rights.

- Majority of regimes related to Indigenous Peoples are **not minimally consistent with UNDRIP**.
Official Forest Tenure Distribution, 2012 – Developing World – Stuck?

- **Africa**
  - 98% Owned and administered by Government
  - 2% Owned by communities and Indigenous Peoples

- **Asia**
  - 68% Owned and administered by Government
  - 23% Owned by Government and designed for use by communities & Indigenous Peoples
  - 3% Owned by individuals & firms

- **Latin America**
  - 6% Owned and administered by Government
  - 23% Owned by Government and designed for use by communities & Indigenous Peoples
  - 3% Owned by individuals & firms
  - 68% Owned by communities and Indigenous Peoples

This picture largely unchanged in last 3 years – most of shift is in Latin America, Brazil!

**Sources:** Sunderlin et al. 2008; ITTO/RRI 2009. Includes best available data as of December 2011.
Other Good News

- **China** – largest forest land reform in modern history: over 300 million people benefitting, over 100 million hectares
- Clear increase in incomes, insurance, mortages
- Clear increase in reforestation
- Clear increase in happiness

- Some major issues – fairness of “choice”, governance of land market, ethnic rights?, women’s rights?
- Government committed to “deepen” reforms – join us in Hangzhou 21-23 November!

Source: SFA- FAO forest tenure reform project
What’s the (Dominant) Reality? Frequent Overlap of Rights, Weak Implementation, Conflicts

- Overlapping rights common (between ministries, between communities and governments, between corporations);
- Weak implementation common, even where there are good laws (and good will);
- Weak to non-existent procedural justice, redress mechanisms, judicial capacity to enforce laws;
- Conflicts – between everyone;
- Widespread confusion over what rights are in that bundle?
What Happened in 2012? (Examples – good news, bad news)

- **Indonesia**: major court case in favor of community rights; slow progress on implementing the agreed “roadmap” to clarify tenure rights; indications of an increase in conflicts;

- **Liberia**: government allocates 50% of territory to concessions, 75% planned, well-publicized clearing of community farms, spiritual sites, water sources, dramatic rise in conflict, 2 complaints to the RSPO;

- **Cameroon**: finalizing new forest law that recognizes community use rights; initiating new land law; government returns forest back to community; growing conflicts over oil palm and mining

- **SE Asia: Laos** - government commitment to undertake a forest tenure reform; learning trip to Mexico; **Cambodia**: small steps, major conflicts; **Myanmar**?

- **DRC**: government commits to a forest and land reform program

- **UN Food Security Commission**: passed Voluntary Guidelines – unprecedented intergovernmental commitment on land rights, FAO proposes BAU

- **World Bank getting more concerned**: Oxfam moratorium; critical internal evaluations recommend more effort on land tenure
Why is this a “Global Crisis”? 

1. **Unfair and insecure land rights are a major driver of many global crises**: poverty, conflicts, cultural loss and degradation, deforestation, food insecurity, carbon emissions, etc --- undermining possibilities of social, equitable development, investment, resilience and resource supply – and endangering us all.

   * How can we address any of our major global resource crises without addressing tenure?

2. **Existing international institutions, organizations not dealing with it** – at the right speed, scale, and necessary level of efficiency and effectiveness
Why a “Missed Opportunity”?  

1. Local demand (local and indigenous peoples’ want it and often deserve it – part of their human rights;)
2. Growing demand from governments to fix it;
3. We’re learning how to do it, lots of experience that can be shared between countries;
4. It’s not too expensive relative to other costs, or benefits
5. Local people are usually as good or better protectors and managers than governments (many developing country governments still promoting deforestation)
6. Governments are often broke and can’t manage it anyway – why not take advantage of the volunteer, good will of local people?

To be clear: we’re not arguing that communities, Indigenous Peoples should own everything; role for all types of ownership; but there should be a rationalization of ownership in many countries, a social – political discussion over land – and a respect of human rights
Some Take Home Messages

• Growing interest, concern and conflict in/over forest lands

• Impressive progress on legislation, but much not implemented or not give adequate security or incentives to landowners, indications of a “stall”
  1. Community rights usually not nearly as strong as private (fee simple) rights - need to strengthen the rights within the bundle;
  2. Need to reduce bureaucracy and transactions costs and pay more attention to implementation of laws (not just getting them passed);

• Some countries moving boldly, most not

• Need to dramatically raise the level of political and financial commitment to tenure reform and implementation and come up with some new ideas and solutions.
NEW INITIATIVES

1. Figure out how to influence financial and commodity supply chains to be more supportive of just and secure tenure and forest conservation

2. International Forest Tenure Facility – to leverage greater commitment and investment;

3. A Global Summit – on securing community land rights in rural/forest areas
National REDD+ Strategies indicate widespread demand for tenure reform:

- 31 of 35 REDD+ Country Strategies identify tenure reform as part of the strategy
- 27 of 40 RPPs and RPINs identify insecure tenure as a driver of deforestation
- 32 of 40 RPPs and RPINs identify tenure as an obstacle to REDD+ implementation
- Peru FIP allocates $10 of $40M to community mapping
- World Bank Kalimantan allocates $3M in a pilot for community mapping
- DRC Land Reform Road Map: $??
- Lao Tenure Reform: $??
- Indonesia Tenure Reform Road Map: $??

Market/Institutional Failure: We are not organized to meet this demand. Real risk of duplication, diffusion, confusion of tenure reform and capacity building initiatives. Need institutions that can coordinate, mobilize funds, and ensure efficiency, scale, quality, and independence.
Problems/challenges to overcome:

- Converting the major flows of private finance into allies
- Converting the major emerging government banks into allies
- Achieving scale and sustainability, and maintaining credibility
- Address the market/institutional failure/gap in program delivery

Observations:

1. Private investors face major (and increasing) risks and some are already investing in their own “footprint”
2. National development banks and sovereign wealth funds are major investors – relatively few
3. Operational costs of recognizing IP and community rights, and supporting governance is small compared to overall investment
4. An opportunity for governments to meet Copenhagen targets
5. Significant experience/know-how exists, including from other sectors (e.g. PIDG and GAVI)
6. **It’s Urgent:** It will take time, patient consultation, and forward-looking strategic thinking to establish a new institution – so get started
An international public-private partnership to scale-up financial and political commitment for forest and rural tenure reforms – ensuring scale and sustainability of finance and commitment, and high quality responsiveness to local demand in advancing land rights

What it would do:
1. Provide funding for tenure reform projects proposed by governments, IPs, CSOs
2. Provide opportunities for investors to reduce risks and proactively contribute to recognition of rights, social and economic development beyond their direct “footprint”
3. Build on existing initiatives
4. Be a leading international forum for encouraging tenure security, mobilize funding, learning and linking to other related initiatives

What is new, different (and risky)?
Leveraging private financial and political capital to promote governance reforms.
Where are we now and what’s next?

1. Completed preliminary concept, design principles, and consultation
2. Secured 1/3 of estimated budget for design and consultation (Sweden and Germany)
3. Strong interest and request for participation from IFC, World Bank, Norway, UK
4. Completed initial analysis of financial perspectives on insecure tenure (The Munden Project)
5. Initiated analysis of investment landscape in key countries, collecting financial data to identify costs and build model
6. Initiated analysis of institutional options, ready in January
7. Planning more consultations November 5 – 6
So….what do you think?
Thank You
1. Leverage substantial public and **private investment**: demonstrate performance, efficiency, and impact

2. Determine the institutional set-up of the facility according to its objectives and best practices

3. Co-governed by rights holders (Indigenous Peoples, communities), private investors and governments

4. Utilize highest safeguards, guidelines, and accountability mechanisms, e.g. UNDRIP, VGs

5. Be demand-driven, respond to requests from governments, CSOs, IPs, community organizations and private sector investors
5. Prioritize forest areas and recognition of collective rights

6. Build on existing institutions and organizations (e.g. FCPF, UN-REDD, FIP)

7. Mobilize funding, pool contributions and establish firewalls between investors and projects

8. Leverage “know-how”, technical experience, political support as much as finance

9. Be designed for future - engaging major governments and investors that are becoming the strongest forces shaping the future of forest areas.
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