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SECURING FOREST TENURE RIGHTS FOR RURAL DEVELOPMENT

Lessons from Six Countries in Latin America



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By

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FOREWORD

The mission of the World Bank Group is to end extreme poverty and boost shared prosperity in a sustainable manner. Clarifying and securing forest tenure rights around the world, and the associated management practices and livelihoods of indigenous peoples and local communities in forest areas, is critical to achieving these goals.

Secure tenure is widely recognized as an essential foundation for achieving a range of rural economic development goals. However, forest areas in low and middle-income countries face particular challenges in strengthening the security of land and resource tenure. Forest peoples are often among the poorest and most politically marginalized communities in their national contexts, and their tenure systems are often based on customary, collective rights that have insufficient formal legal protection. Government presence and capacity in forest areas to support and defend local rights may be limited, and forest lands also face competing pressures for other land uses. These longstanding challenges have acquired new urgency with the keen focus on the role of forests in climate change mitigation, and increasing evidence showing that securing community tenure and supporting community-based forest management are key strategies to reduce deforestation.

This study on *Securing Forest Tenure Rights for Rural Development* aims to contribute to efforts worldwide to reduce poverty and strengthen sustainable management in forest areas. It does so by reviewing the progress of tenure reforms in six countries in Latin America, and drawing lessons to help advance the realization of these reforms and inform similar initiatives in other countries. We hope that the results will be useful for policy-makers who have responsibility for forests, climate change, land tenure, agricultural development and poverty reduction programs in rural areas, as well as for civil society organizations and international partners working on land tenure and natural resource governance. We also expect that this study will assist and inform the work of World Bank programs in rural development, environment and natural resources, agriculture, social development, climate change, and carbon finance, by increasing attention and support to indigenous and community forest tenure as it relates to these areas of work.

Laura Tuck

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INTRODUCTION

One of the most important challenges that governments face in their efforts to reduce poverty and inequality in rural landscapes, and achieve environmental and climate goals, is to recognize and secure the land and forest tenure rights of indigenous peoples and local communities. There is growing recognition that secure tenure rights provide a critical foundation for local economic development, biodiversity conservation, carbon emissions reductions, and the realization of human rights. Moreover, promising progress has been made by many developing countries, particularly in Latin America, to introduce legal frameworks and targeted policies to transfer or devolve forest rights to local people. In many cases, however, these reforms remain partial, and their implementation and enforcement is still far from materializing.

These unfinished tenure reform agendas have significant impacts on the ability of countries to achieve their poverty reduction and environmental goals. A substantial body of research documents the essential foundations land and resource tenure provide for food security and sustainable livelihoods,¹ including contributions to women's livelihoods and gender equity.² With regard to environmental goals, a comprehensive review of relevant studies undertaken in 2014 found that where communities have legal rights to their forests and government support for management and enforcement, deforestation rates (and associated carbon emissions) are significantly lower than in areas outside those community forests.³ As one example, Nelson and Chomitz⁴ found that multiple use protected areas in Asia and Latin America limited fires more than strictly protected areas, and indigenous territories were much more effective, with remoteness and environmental factors held constant.⁵ The global consensus on the importance of tenure security for development

and human rights has been expressed in international frameworks such as the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*⁶ and the UN Declaration on the Rights of Indigenous Peoples,⁷ and through the inclusion of land-related targets in the Sustainable Development Goals. In spite of this evidence and increased recognition, unclear and insecure land and forest tenure rights remain widespread in the developing world, and continue to threaten the integrity of local livelihoods and the provision of environmental services, while impeding poverty reduction and increasing the negative effects of climate change.

This study explores the progress of tenure reforms in six countries in Latin America, in order to understand and draw practical lessons from their experience that can inform future efforts within those countries and in other parts of the world to strengthen, expand and consolidate forest tenure, with a particular focus on the rights of indigenous peoples and local communities. Latin America has led the way in undertaking legal and institutional reforms for more robust and inclusive tenure rights, with the result that approximately 39% of the region's forestlands were owned or controlled by indigenous peoples and local communities as of 2013.⁸ However, limited institutional capacity, cumbersome regulations, and powerful competing interests continue to impede the full realization of community tenure security. Resolution of these constraints through investment in a next phase of the reform process is critical for the future of Latin America, where forest ecosystems cover as much as 49% of the land⁹ and rates of deforestation remain among the world's highest¹⁰. Learning from this experience is also critical for other countries embarking on or in earlier stages of tenure reforms.

This report aims to contribute to the discussion and analysis currently under way in many countries in Latin America, and in other parts of the world, regarding the key policy, legal, institutional and technical elements that are needed to strengthen, secure and expand indigenous and community forest tenure. Following a brief introduction to the study methods, this report presents key overarching findings from the six country studies, and concludes with recommendations for future work, including recommendations on ways World Bank programs can support further recognition and realization of indigenous and community forest rights.

APPROACH AND METHODS

This report summarizes the results of a comparative analysis of forest tenure regimes in Argentina, Colombia, El Salvador, Honduras, Nicaragua and Peru. The study was designed to assess the current status of forest tenure reforms in Latin America and identify the actions needed by governments to leverage sustained political, institutional, financial, and technical support to strengthen and operationalize them.

The study began with an in-depth review of official and non-official literature on the status of forest tenure in each country. This work was complemented by field activities to ground truth and expand on the results of the desk review. Particular attention was given to the role of forest institutions and other related government agencies responsible for granting or implementing tenure rights. Field visit interviews were also conducted with key institutional, technical, and political informants and stakeholders, including a sample of rural communities and social organizations.

Countries were selected based on interests and requests from government agencies, World Bank program managers and task teams, and other

development partners for strategic analysis on the interplay of land policy and administration, forests and climate change, and management and conservation of natural resources. The six countries are currently being assisted by the Bank to formulate and implement national REDD+ strategies, and have identified insecure or unclear tenure as an underlying cause of deforestation and forest degradation and an obstacle to REDD+ implementation.

The studies used the *Bundle of Rights* conceptual framework originally introduced by Schlager and Ostrom (1992), and modified by the Rights and Resources Initiative (2012). The *Bundle* is a group of seven different rights that may or may not be formally recognized in the legal frameworks adopted by states regarding indigenous and community tenure. The seven rights are those of Access, Extraction, Management, Exclusion, Alienation, Unlimited Duration and Due Process, or compensation (see Box 1 for definitions of each).

A particular contribution of this study is that it goes beyond previous assessments of legal frameworks or the geographical areas

BOX 1: FOREST TENURE "BUNDLE OF RIGHTS"

- **Access:** Right to enter or pass through a forest
- **Withdrawal or Use:** Right to benefit from the forest's resources
- **Management:** Right to make decisions about forest resources and for a forest area over which the community has rights of access and withdrawal or use.
- **Exclusion:** Right to refuse access to and use of the forest
- **Due Process and Compensation:** Right to legally challenge a government's efforts to take one, several, or all of a community's forest rights
- **Duration:** The length of time a community may exercise its rights – either limited or recognized in perpetuity.
- **Alienation:** Right to transfer the forest to another by sale, lease or other means

Source: WRI, Securing Rights, Combatting Climate Change – citing RRI 2012, Larson 2012.

recognized to examine the extent to which the implementation of forest tenure reforms has resulted in tenure security and the exercise of tenure rights. This is a critical area of focus as countries move beyond the enactment of reforms to focus increasingly on the institutional, regulatory and other requirements needed for the effective realization of forest tenure rights. It is also important for countries seeking to enact reforms to understand and anticipate design and implementation challenges that determine the success or failure of the desired forest tenure devolution.

The audience for this study includes national and sub-national government institutions in charge of designing and implementing sectoral policies and programs, civil society organizations, and

international partners working in the fields of land tenure and governance of natural resources. Findings and lessons are also intended to assist Bank staff in a topic that is of increasing interest across the different Global Practices and task teams that work in rural landscapes, including land administration, environment and management of natural resources, agriculture, social development - including indigenous peoples rights and other issues - climate change, and carbon finance. They may also help inform actions to meet the requirements of the World Bank Environmental and Social Framework, particularly as it relates to land and indigenous peoples. Although the study focuses on Latin America, its methodology, findings, and recommendations are of high global relevance and should be of interest to countries in other regions.



MAIN FINDINGS AND LESSONS

Tenure reforms have arisen from the specific historical, social and political situation of each country. Major reforms have often been associated with broader political changes, such as shifts from military to democratic governments and/or the resolution of civil conflicts. Concrete outcomes have included legal frameworks and policies that recognize and consolidate collective tenure regimes, and promote participation and consultation in decision-making processes regarding land use. In Argentina, tenure reforms were enacted at the end of the military dictatorship in 1985, with the Law on Indigenous Policy and support to Aboriginal Communities (*Política Indígena y apoyo a las Comunidades Aborígenes*). Tenure rights were strengthened by the constitutional reforms of 1994, which recognized indigenous peoples' rights to collective ownership of land.

Colombia has put in place robust legal and institutional frameworks for recognition of indigenous and community tenure. The main subjects of these processes have been indigenous and Afro-Colombian communities, who benefited from the constitutional reforms of the early 1990s and Colombia's ratification of ILO Convention 169.

In El Salvador, collective land ownership was abolished in the late nineteenth century, and it has not yet been reestablished. Moreover, indigenous peoples were only legally recognized as a minority in 2014, through constitutional reforms and government endorsement of ILO Convention 169.

In Honduras, the military government in 1974 dictated that all forest lands and resources would be controlled by the state, and established the Honduran Corporation for Forest Development¹¹ to manage forests and commercial extraction activities. Since ratifying ILO 169 in 1995, the government has transferred forestlands to some indigenous communities, particularly the Miskito

people of the Caribbean region. However, most forests continue to be held as state property, within which the State grants "usufruct contracts" to organized groups or cooperatives that enable them to access, use and manage forest resources.

Nicaragua introduced tenure reforms more recently than other countries in this study, adopting in new legal frameworks in 2005. Since then, actions to implement the recognition of tenure rights has focused mainly on devolving tenure rights to indigenous peoples in the Caribbean region.

In Peru, despite prolonged and complex historical conflicts over the recognition of community tenure rights, four tenure regimes have been enacted to devolve rights to indigenous and peasant communities. While most were enacted prior to 2002, the category of Indigenous Reserves was created in 2006 to protect the rights of indigenous peoples in a situation of isolation or initial contact.¹²

These introductory points on each country provide context for the following main findings of the study.

1. Significant progress has been achieved in the legal recognition of customary rights of indigenous peoples and local communities to forest lands

With the exception of El Salvador, all the countries studied have adopted legal regimes that recognize the rights of indigenous peoples and local communities to forest land, and have taken substantial steps to formally recognize lands under collective ownership. Progress is both qualitative, in terms of the adoption of legal instruments that recognize the collective rights of forest communities, and quantitative, in terms of increases in recognized forest areas.

TABLE 1. TENURE REGIMES AND THE BUNDLE OF RIGHTS CONFERRED

Country	Tenure Regime	Rights conferred						
		Access	Withdrawal/Use	Management	Exclusion	Due Process and Compensation	Duration	Alienation
Argentina	Community Forests	Yes	Yes	Yes ¹³	Yes	Yes	Unlimited	No
Colombia	Resguardos Indígenas (Indigenous Reserves)	Yes	Yes	Yes ¹⁴	Yes	Yes	Unlimited	No
	Tierras de las Comunidades Negras (Afro-Community Lands)	Yes	Yes	Yes ¹⁵	Yes	Yes	Unlimited	No
El Salvador	None	–	–	–	–	–	–	–
Honduras	Indigenous Community Lands	Yes	Yes	Yes	Yes	Yes	Unlimited	No
	Usufruct Contracts for Forest Management	Yes	Yes	Yes ¹⁶	Yes	Yes ¹⁷	30 years	No
Nicaragua	Community Forests	Yes	Yes	Yes	Yes	Yes	Unlimited	No
Peru	Tierras de Comunidades Nativas con Aptitud Forestal (Native Community Forest Lands Suitable for Forestry) ¹⁸	Yes	Yes	Yes	Yes	Yes	Unlimited	No
	Reservas Indígenas (Indigenous Reserves) ¹⁹	Yes	-- ²⁰	Yes	Yes	Yes	Unlimited	No
	Tierras de Comunidades Campesinas con Aptitud Forestal (Peasant Community Forests Suitable for Forestry)	Yes	Yes	Yes	Yes	Yes	Unlimited	Yes ²¹
	Reservas Comunes en Suelo Forestal (Communal Reserves in Forest Land)	Yes	Yes	Yes	No	Yes	Unlimited	No

Table 1 above shows the main forest tenure regimes in each country and the rights they confer. As indicated in the table, seven of the ten tenure regimes in the countries studied confer the full bundle of rights of access, withdrawal, management, exclusion, and due process and compensation, for an unlimited duration, that provide communities with the full legal basis for tenure security.²² In the remaining three cases, there are certain limitations on the bundle of rights. Honduras Usufruct Contracts for Forest Management are for 30 years, while Indigenous

Reserves in Peru, designed to protect the lands of indigenous peoples living in voluntary isolation, allows use for subsistence purposes only. Also in Peru, in Communal Reserves in Forest Land, the government retains formal ownership of the land and transfers rights of access, forest management and use to communities.

Substantial areas of land have also been devolved to communities under these tenure regimes. For example, Colombia has recognized rights of indigenous peoples and Afro-Colombian

communities to almost 50%²³ of the country's forest land. In Nicaragua, 49%²⁴ of forests have been transferred to indigenous communities, mostly in the Caribbean region. In Peru, approximately 26.1%²⁵ of forests are formally held by indigenous peoples and local communities, mostly in the Amazon region.

2. Political and judicial activism in favor of indigenous peoples has played an important role in transferring forest rights

Much of the progress in recognizing and transferring customary forest tenure in the six countries has resulted from direct action and advocacy from indigenous peoples and community organizations, often with support and collaboration from wider civil society constituencies. For example, in Argentina, the motivation and momentum for forest tenure reforms arose mainly from the land claims of indigenous movements in the northern region, which has the highest concentration of indigenous peoples. The mobilization of Amazonian indigenous peoples' organizations at local, regional and national levels has also been a significant factor promoting tenure reforms in Peru.

In addition to bottom up demands from indigenous and civil society organizations, judicial activism from courts and local grievance mechanisms has also played an important role. This phenomenon has been particularly important in Colombia, where the Constitutional Court declared certain laws on rural development issues invalid, including the Forest Act (Law 1021 2006), on the grounds of inadequate consultations with indigenous peoples and Afro-Colombian communities. In a similar way, the Ombudsmen (*Defensorías del Pueblo*) in Peru have played a central role in questioning political powers in their actions to recognize and transfer tenure rights to indigenous communities.

In some cases, pressures to strengthen the recognition of community rights have also come from supra-national institutions, such

as regional courts. The Inter-American Court of Human Rights, in particular, has had an important influence on national and local governments in Latin America regarding indigenous rights issues. Nicaragua is a good example of a country where decisions of the IACHR have had a direct impact on community tenure rights. The Court ruled in 2001 that the government had violated the rights of the Mayagna indigenous community of Awas Tingni by granting a forest concession in their territory in 1995. The Court ordered the government of Nicaragua to pay compensation and create an effective mechanism for demarcation and titling of indigenous territories. While these forms of external influence by judiciary institutions have been most pronounced in Latin America, recent decisions by other regional tribunals – such as the African Court on Human and Peoples' Rights - indicate that the role and influence of such regional courts may increase in other regions.

In contrast to the active role played by indigenous, civil society and judicial institutions, none of the countries studied have had the benefit of a sustained, national initiative from the executive branch to implement forest tenure reforms. This has, in turn, had implications for patterns of implementation and protection for the forest tenure rights of indigenous peoples and local communities.

3. Implementation of forest tenure reforms is uneven, and many communities have yet to receive forest tenure rights

Despite advances in the adoption of legal frameworks recognizing forest tenure rights, the implementation of those frameworks in terms of the transfer of rights to specific areas has progressed unevenly across different communities and geographical regions within each country. In some cases, this uneven recognition reflects patterns of organized advocacy for the recognition of land claims. In Peru, for example, titling efforts have proceeded at a slow rate, and have focused mainly on the Amazon region – particularly in the regions of San Martín, Loreto and Ucayali – where



mobilization of local and national indigenous federations has been most active. Still, according to the Institute of the Common Good (IBC),²⁶ 6.5 million hectares remain to be titled for native communities in the Peruvian Amazon.²⁷ In other cases, uneven implementation reflects differences in the responses from government institutions at different levels. In Argentina, where under the federal system provincial governments share responsibilities for transferring forest tenure rights with the National Institute of Indigenous Affairs (NACI), the more progressive provincial governments have taken greater initiative to implement and enforce policies recognizing the rights of indigenous communities.

Historical factors also play a role in patterns of implementation of forest rights. For example, in Nicaragua, most of the successful recognition of indigenous forest lands has occurred in the Autonomous Territories of the Caribbean coast, while in the north and Pacific regions little progress has been made. Similarly, the Miskito people of the Caribbean coast in NE Honduras recently received title to a large area of land,

while commitments to title communal lands of other indigenous communities (such as the Pech, Tolupan, and Tawaka) remain unfulfilled. One factor affecting these transfers of land to indigenous communities in the Caribbean coast was the former status of these regions as British protectorates, under international treaties signed by Nicaragua and Honduras with the United Kingdom. This history created a unique legal framework for the recognition of indigenous land rights in those areas.²⁸

4. Limited institutional capacities and coordination are constraining the implementation and enforcement of forest tenure reforms

A common denominator in all six countries is limitations in institutional arrangements and capacity to recognize and implement community rights, including financial and technical limitations of national and sub-national government agencies and weak judicial systems. Even in countries like Colombia, which has a robust legal and institutional framework,

the institutional presence and capacity in local provinces, particularly in Amazon and Pacific Coast regions, has been very limited. The Amazon region of Peru is in a similar situation, where a weak institutional setup limits the capacity of the government to grant and regularize land titles, assist communities with conflict resolution over land disputes, and provide communities with permits and technical assistance to manage their forests.

One significant factor impeding institutional support for tenure reforms is the division and lack of clarity in mandates to transfer, regularize and enforce the bundle of forest tenure rights among a variety of government agencies at both national and sub-national levels. Specific agency mandates are often not clearly defined or overlap, particularly when there is more than one sectoral entity operating in a particular political district (e.g. agriculture, forestry, conservation, mining). The lack of harmonization and continuity of actions among relevant agencies is particularly acute in regions such as the NW of Argentina or the Amazon region of Peru, where titling of indigenous customary lands is well behind expectations.

In addition to serious delays by central governments in transferring or regularizing community tenure rights, land administration agencies have been criticized for their inefficient management of information, including gaps and inconsistencies in registry and cadaster information between central and local government agencies. This is one area where the World Bank and other donors have been able to help, although work to strengthen land agencies has mostly focused in urban and peri-urban areas, where taxation and urban planning needs have given land administration reforms more political urgency and geographical access is less problematic.

Decentralization processes have also become an important factor affecting the progress of forest tenure reforms. Decentralization offers potential to accelerate and create more responsive tenure recognition processes, closer

to local forest communities. In Honduras, for example, decentralization has strengthened local institutions and promoted more active civil society participation in processes for tenure recognition and territorial planning. Even so, care may be required to ensure that empowerment of local authorities goes hand-in-hand with support for inclusive decision-making systems. In the Honduras case, indigenous communities oftentimes did not perceive themselves as having a voice in municipal governments. This study also indicates that central governments commonly have transferred land regularization mandates to local governments in a very top-down manner, without careful consideration of local institutional conditions, and with limited technical, institutional and financial support. In countries like Argentina, where provincial governments have had responsibility for the recognition of indigenous forest rights for more than ten years, titling has moved slowly, mainly because of unclear and overlapping mandates between central and local governments. In Peru, regional governments have been only marginally involved in the design of an ambitious decentralization reform, and often face pressures from local constituents demanding action on claims that have been unresolved for many years. Local governments must often respond to high expectations among indigenous communities while grappling with serious gaps in technical, financial and legal support.

With the exception of Colombia and Nicaragua, countries also do not have specific administrative or judicial institutions to resolve conflicts and enforce forest tenure rights. The few conflicts that reach the judicial system are channeled through the general courts, which are not prepared or inadequate to address forest tenure issues.

This finding points to the need to anticipate and ensure sufficient investment in the institutional capacities needed to see through the implementation of reforms, beyond their enactment in law. For example, in Nicaragua, the Autonomous Governments of the north and south territories of the Caribbean, which are predominantly indigenous, play a key

intermediary role with the central government and have developed local capacities to assist in the processing of community land titles. In Honduras, participatory zoning plans led by municipalities have helped indigenous and local communities identify and resolve boundary conflicts with neighboring communities and public forest lands. In Colombia, conflict resolution needs have been addressed by the establishment of specific government entities and procedures to support land restitution.

5. Overlapping claims to forest lands and weak enforcement of rights to Exclusion are major obstacles to tenure security

In conjunction with the institutional constraints described above, a significant factor contributing to delays in the titling process is the need for communities to establish a clear title to their land, free of boundary disputes and overlapping claims.²⁹ However, as the agricultural frontier expands into customary forest lands, many indigenous communities face a situation of third parties residing within the territory they claim and accessing communal lands and resources, with or without legal titles. These third parties include landless farmers as well as private sector actors seeking to extract timber and other forest resources from community lands.

Demands for land from social movements of landless farmers present a significant challenge to the establishment of clear titles. The social and economic impact of massive resettlement of these third parties (*terceros*) makes removing them from indigenous territories unfeasible in many cases, as many governments do not have the financial resources or sufficient arable public land to respond adequately to their demands. In addition, large scale agriculture, mining and commercial logging operations tend to be promoted by governments and evidently benefit from irregular or absent formal tenure arrangements.

Problems with multiple claims and encroachment also impact titled lands. In Nicaragua, for example, one of the main threats to titled indigenous territories of the Caribbean

has been the growing occupation of peasants and landless farmers. These regions have become the last agricultural frontier, which is also affecting important protected areas such the Bosawas Biosphere Reserve. Titled indigenous territories in this region extend across large, sparsely populated, and remote areas, and peasant invasions have not been controlled by regional authorities or the central government.

The lack of action to resolve many of these conflicts, including limitations of judicial systems in addressing and managing grievances, contributes to a *quasi-null* exercise of the right of *Exclusion*. Tenure regimes frequently recognize the rights of communities to exclude third parties seeking to access land or resources on their territories, and responsibility for enforcement is normally assigned to the State (as with other forms of property). Unfortunately, in all six countries this important government function is very weak, particularly in remote areas under high pressure for development. An alternative interpretation of the causes of insufficient or negligent government performance in regularizing and enforcing community tenure rights is a lack of political will in the face of large scale investments in agri-business, forestry, mining, and oil and gas production, usually through government concessions. These pressures from private sector interests and migrants from other parts of the country are another critical issue that must be addressed to sustain and advance tenure reforms.

6. The scope of the rights of Extraction and Management is undermined by overregulation

With regard to *Management*, all the countries studied, except El Salvador, recognize the right of communities to make decisions on how to manage their forest lands. In countries like Colombia, Honduras and Nicaragua, the legal framework provides for the establishment of administrative and territorial entities with the power to exert the management rights. Furthermore, in all six countries, communities have rights of *Extraction* of forest resources for their own direct consumption.³⁰

Communities may also conduct commercial timber extraction and connect with local or international timber markets to sell their products in five of the six countries (excluding El Salvador). However, commercial forestry activities in both communal and private lands are highly regulated by the State, usually by forestry agencies, who must approve forest management plans and extraction permits to forest land owners. The transaction costs to comply with the complex and top-down regulatory frameworks normally involved in commercial forestry are very high for communities. Management plans tend to be difficult to prepare, unnecessarily detailed and costly. They must be prepared or endorsed and supervised by professional foresters who charge a fee for their services and are seldom members of the community, nor necessarily understand and respond to their interests. It is also common that forest management permits have, as an additional legal requirement, an environmental impact assessment that must be sanctioned by environmental authorities. In Honduras, for example, the usufruct contracts communities establish with the government already contain provisions to manage extractive activities, but additional conditions such as a management plan are required for commercial extraction of timber. It was consistently observed in all countries that communities often fail to comply with regulations for two understandable reasons; first, they are cumbersome and costly, and second, they commonly discriminate or do not take into account local needs and conditions.

It is important to distinguish between the technical and administrative capacity of communities to regulate and conduct forest management in their own lands and the problems associated with prescriptive regulatory demands imposed by governments. Communities may seek technical support to develop their capacities for commercial forest management. However, legal frameworks for government control of community productive processes which are unrealistic, and do not respond to local socioeconomic and biophysical conditions, have been counterproductive. By imposing institutional and financial limitations

on community efforts to sustainably use and manage forests, such overregulation commonly leads to logging which is illegal (without the required permits and plans) and foments a black market in timber.

Overregulation has also been regressive, in that it tends to reward larger commercial entities at the expense of smaller and poorer community forest enterprises. A common trend observed in all six countries is that most commercial forestry is conducted by third parties, usually private companies who establish long term concession contracts with governments in public lands, including in areas where customary rights of local communities are still in dispute. In some cases companies establish concessions directly with communities in which communities lose control over decisions about the management of their forests for long periods, and receive only marginal economic benefits. Greater relative investment in community-based forest management, along with more appropriate and less cumbersome regulations, will be an important focus for ongoing reform efforts in these countries, and are a critical consideration for other countries seeking to devolve forest rights to communities.

7. Rural development policies and programs are creating competing pressures on forest lands

In all the countries studied, national macro-economic policies have favored the rapid expansion of large-scale agriculture, mining, and energy sectors in rural areas, leaving forest tenure reforms and community-based production systems at a very low priority. While countries understandably seek to promote investments and growth in rural areas, these developments are often adversely affecting both the environment of indigenous and community lands and prospects for the consolidation and protection of community forest tenure rights.

Policies and programs to promote large-scale investments in rural areas are an urgent issue affecting forest tenure reforms in all the countries

studied. In Argentina, the agri-business sector generates most of the economic growth, and exerts strong pressure to convert forest land to large scale agriculture, mainly targeting international markets for soy and other commodities. These agricultural investments have resulted in serious threats to the regularization of customary lands to indigenous communities, as lands claimed by communities are sometimes allocated to private sector concessions. In Colombia and Peru, mining and energy policies prioritizing large-scale investments have slowed the pace and limited the geographical scope of land regularization policies and programs, particularly for indigenous peoples of the Amazon in both countries, and for Afro-Colombian communities in Colombia. Land use and territorial planning in El Salvador have focused on intensive agriculture which, combined with overpopulation, has resulted in highly fragmented land-holdings. This situation seriously limits any potential to promote the future recognition of indigenous or community lands, under a common pool resources regime. In Honduras, agricultural expansion policies, particularly in support of the coffee growing sector, have led to the establishment of coffee plantations in forests, to the detriment of communities seeking to secure their forest tenure rights. In both Honduras and Nicaragua, policies

and projects of the energy sector continue to be a challenge for the implementation of forest tenure reforms.

Recent developments in Peru illustrate these dynamics. Here, land management policies have prioritized the expansion of agricultural, mining, and large scale forest concessions. In many cases, forestry, oil and gas, and mining concessions have been granted in areas where local communities have customary rights or where forest management plans and permits had been previously approved to local communities. The government has also recently approved legislation that simplifies procedures for the government to grant concessions to investors interested in developing agribusiness projects, including by weakening social and environmental impact requirements.³¹

A contributing issue in all six countries is the historical and current bias towards promoting agriculture and cattle raising activities, leaving the sustainable use and conservation of forest as a secondary priority. Agricultural policies continue to promote changes in land use from forests to agricultural or pasture, giving titles to individual landowners who can prove that they are and have been cultivating the land for crops



or other productive activities for several years. It is also common that Ministries of Agriculture or other agricultural agencies are responsible for designing and implementing forestry policies, and in some cases - such as Honduras and Peru - even the mandate to regularize land tenure. It could be speculated that governments have focused on promoting large scale activities with the intention to achieve a larger impact at the level of the national economy, and access international markets. However, these economic development efforts must avoid neglecting and discriminating against the smaller scale productive activities undertaken by forest communities, in light of the significant contributions of such enterprises to local economies, poverty reduction and equity.

8. Participation, Consultation and Grievance Mechanisms are key to a successful implementation of forest tenure reforms.

The priority given to economic development over the consolidation of community tenure reforms in forest areas is further exacerbated by policy gaps or weak implementation of rights to consultation, participation, and Free, Prior, Informed Consent (FPIC) in decision-making regarding third party investments in customary lands. In the case of Nicaragua, for example, the legal framework regulating the energy sector requires the formal consent of community authorities and the Regional Autonomous Councils to any mining or oil extraction concession. However, if a community rejects an initiative once, the regulations allow proponents to object to this rejection and initiate a new request, with the expectation that the concession will be eventually approved. This negates the real possibility for communities to decline projects in their territories.

An issue related to weak consultation and consent processes is the frequent lack of effective mechanisms for voicing and responding to grievances regarding tenure rights. Official consultation and grievance management procedures are rare, and when they occur they tend to be reactive, rather than predictable,

consistent and based on a true participation policy. They are also usually characterized by disparities in the degree of access to information and representation among the stakeholders involved, to the disadvantage of indigenous and community groups. Importantly, these groups are themselves not homogenous in their interests, yet the perspectives and concerns of women and youth tend to be poorly represented.

The experience of Colombia offers lessons in this regard, as the peace process and restitution of lands to local communities affected by armed conflicts has led to more progressive policies and norms that promote inclusiveness and participation in decision-making. Many of these instruments have become important elements in the process of devolution of forest tenure rights to indigenous and Afro-Colombian communities. In Peru, the new Law on Public Participation and Consultation of Indigenous and Native Peoples is an important step requiring that communities approve initiatives in their territories. While effective implementation of such legal frameworks remains a challenge, they create a foundation for promoting the inclusion and participation of indigenous communities in decision-making processes regarding investments and development interventions in their areas, and provide a base of experience that can inform this critical dimension of tenure reform initiatives elsewhere.

9. Secure tenure rights are not yet sufficiently taken into account in climate mitigation initiatives to reduce emissions from deforestation and degradation.

Recognition and support to the forest tenure rights of indigenous peoples and local communities is one of the necessary conditions to achieve success in national initiatives to combat deforestation and degradation and reduce carbon emissions from forest ecosystems. As highlighted in the introduction, global studies increasingly demonstrate the efficacy of community-based tenure and management for reducing deforestation. From a negative perspective, it is increasingly evident

that without a legal and institutional framework to regularize forest tenure rights and promote a fair distribution of the costs and benefits of sustainable forest management, deforestation, degradation, and associated carbon emissions will continue to increase.

The six countries included in this study are in the process of developing their national strategies for the Reduction of carbon Emissions from Deforestation and forest Degradation (REDD+) under the Forest Carbon Partnership Facility (FCPF) led by the World Bank in order to become eligible for results-based payments for emissions reductions. All six governments have identified the precarious situation of their forest tenure systems as a probable direct or indirect cause of deforestation and forest degradation. Accordingly, most of the REDD+ strategies under construction are identifying initial approaches to deal with this problem. Peru and Nicaragua, for example, have proposed more concrete measures to promote land titling among communities. Peru, Honduras, Colombia and Nicaragua have also made progress by identifying priority areas where communities would be supported in securing tenure and improving their capacity to manage forests more sustainably. International organizations supporting REDD+ initiatives are starting to recognize the need to address tenure as a central foundation for the success of REDD+ activities and for defining who has rights to share in revenues that may be generated from emissions reduction payments.³²

However, even considering that strategy development is ongoing, the impacts of this increasing recognition have been limited to date. A recent analysis of progress in developing REDD+ programs for FCPF found that most have not yet conducted tenure assessments to inform understanding of the

potential impacts of new REDD+ initiatives and strategies to address them.³³ In addition to the direct importance of secure forest tenure for sustainable forest management, other key aspects of REDD+ - such as allocation of carbon rights and benefit-sharing - hinge on the clarity of tenure arrangements. As countries begin developing legal frameworks for carbon rights in the wake of the Paris Agreement, and formalizing their Intended National Determined Contributions (INDC), investments to clarify and secure underlying forest rights will be needed to avoid disenfranchising communities and to establish a sufficient basis for communities to participate in REDD+ activities in their customary lands. However, a review of the 161 INDCs submitted for COP 21 found that only 21 countries, representing 13 percent of the tropical and subtropical forest area, made clear commitments to implement tenure security for indigenous peoples and local communities or Community-based Natural Resources Management (CBNRM) objectives in their INDC submissions. None of the six countries included in this study were among these.³⁴

The current lack of secure forest rights has contributed to opposition to REDD+ from some indigenous peoples' organizations, communities, and civil society organizations, based on the concern that REDD+ will spark a re-centralization of control over forests and/or will simply reinforce the status quo. Countries like Nicaragua and Peru, for example, were found in the country studies to have conducted their REDD+ process in a centralized way, retaining much of the decision-making authority as well as funding provided by international donors in their capital cities. These findings reinforce the need to promote more decentralized approaches to REDD+, given that REDD+ activities will necessarily take place in forested regions far from national capitals.

CONCLUSION AND RECOMMENDATIONS

As highlighted in the findings and lessons above, the substantial steps taken in many countries to recognize indigenous and community forest rights urgently require a new phase of energy and investment to fully realize and secure those tenure systems and prevent countervailing pressures from blocking or rolling back the advances achieved. In particular, this analysis reveals the significant role of weak institutional arrangements, overlapping claims, over-regulation, inadequate enforcement and other land use pressures in impeding the full realization of indigenous and community forest rights.

The current limitations to secure forest tenure are not inevitable, and can be addressed through concerted action – and the current global climate crisis presents an important reason to do so. Viable tenure reforms that clarify and secure access of local communities to forest tenure and use of natural resources will be needed if governments want to significantly reduce deforestation and degradation of rural landscapes, maintain vital ecosystem services, reduce greenhouse gas emissions, and improve resilience of communities in their response to increasing climatic variation. Governments interested in promoting sustainable development and halting ecosystem degradation in rural forest landscapes, will need to assess the legal and institutional gaps in their forest tenure regimes, and identify the measures needed to strengthen the recognition of tenure rights and enable communities to effectively access, manage and benefit from their forest resources in a sustainable manner. Specific recommendations, drawing on this analysis, are as follows.

Recommendations:

- 10. Give greater political priority and sustained attention to strengthening forest tenure security for indigenous peoples and local communities.** Much of the impetus for a first phase of tenure reforms has come from bottom up social movements, often combined with support from judicial bodies. Maintaining momentum going forward will require that governments engage proactively to overcome current policy and institutional constraints, and ensure that reforms are implemented consistently across forestlands. This means anticipating the needs and issues likely to arise in different phases of reform, and building long term strategies that can adapt to changes in administrations and new pressures.

Increasing recognition of the importance of secure land rights among multiple constituencies offer new possibilities for political support. These include corporate actors concerned to green their supply chains and avoid land-grabbing, REDD+ advocates, human rights activists, and political movements (such as the Colombia peace process). For governments, tenure security needs to be recognized as a priority issue that requires political will, institutional coordination and harmonization of policies, mandates and programs. The international donor community, including the World Bank, can support the phasing and

sustained effort needed for tenure reforms, including through better integration of its lending instruments and more consistent advice and dialogue. While achieving tenure security in forest lands is a challenging and long term endeavor, it is also a necessary and urgent one.

- 11. Develop clearer and more efficient mechanisms for resolving overlapping claims that impede titling and protection of indigenous and community forest lands.** The patterns of overlapping claims in indigenous and community forest lands are complex but need to be addressed and resolved as part of titling processes. Local judicial bodies and mechanisms will be particularly important to resolve overlapping claims, and government enforcement capacities will need to be stepped up to prevent or respond to incidents of encroachment. Indigenous and community capacities to monitor and patrol their territories also require increased support.

Geospatial tools are advancing very quickly in terms of both social innovation and technological innovation. This creates new opportunities, such as provisional mapping of indigenous and community lands so their presence can be made visible on national cadasters. Fusion data bases of all existing forest management plans, concessions, mining licenses, and other land uses will help identify overlaps that can be put forward to all parties for resolution, including public defenders. Geospatial tools can also support real-time monitoring to help communities identify encroachment early and strengthen enforcement systems. REDD+ is going to require this infrastructure as well.

- 12. Prioritize institutional strengthening for recognition, support and enforcement of indigenous and community forest rights.** Weak government institutional capacities with unclear or overlapping mandates are a major constraint to the implementation and protection of community forest

tenure rights. Progress towards effective institutional arrangements will require taking a comprehensive look at the institutional roles and capacities needed for tenure, and taking steps to strengthen them. Lessons from this analysis include the need to focus tenure recognition mandates in a smaller number of government agencies, clarify the division of labor, and ensure harmonization and coordination across agencies with complementary roles. It will be important for countries embarking on reforms to anticipate the institutional capacities that will be needed and make provision for these at the outset of their reform processes.

- 13. Pay particular attention to the opportunities and challenges of decentralization for local forest tenure.** When done right, decentralization locates government functions and support closer to local constituencies, and enables them to be more flexible and responsive to local concerns. To achieve this, decentralization frameworks need to be designed with direct involvement of affected communities, and local governments need to be main actors, not only the subjects of decentralization policies and programs that are decided vertically from the center. A key element to ensuring inclusive decision-making within a decentralized environment is to recognize that devolvement of authority must be accompanied with strengthening of the local processes that ensure “representativity” and effective participation by local communities who may otherwise remain marginalized.
- 14. Create new models for community forestry that empower communities and avoid counterproductive barriers to their forest management.** Simpler and more flexible legal frameworks are needed to regulate community forestry and other extractive activities such as artisanal mining. These systems should be appropriate and responsive to local conditions, and

avoid requirements for costly outside technical support to the extent possible. Systems should aim to establish the minimum requirements needed for environmental and social safeguards, while also supporting development of community forestry capacities and markets.

Where they exist, traditional forest governance and management systems should provide the point of departure for more *appropriate and locally-responsive* forest regulation systems. Experience with a “best management practices” (BMP) approach indicates that a great deal can be accomplished by moving from highly prescriptive regulatory approaches to simplified “community friendly” approaches. BMPs are simplified norms that respond to the most relevant environmental and social risks in a particular forest operation, and tailor implementation and enforcement measures to local conditions and capacities. Experiences in many countries show that BMP systems yield much better results and compliance than traditional top-down regulations.

15. Adjust the balance in rural development priorities to avoid discriminating against community-based production activities.

Current rural development policies are strongly biased towards large-scale commercial actors with limited recognition and support to communities and their local production systems. Large-scale commercial developments are negatively impacting local rights and livelihoods, forest ecosystems/services, and the environment/conservation of biodiversity. A bottom up approach to rural development needs to start with a committed shift to right the balance of political priorities to favor local communities, and a clear understanding of the dimensions and complexity of the tenure situation.

While pressures on land from agribusiness and extractive industry sectors will continue, they should be better controlled and channeled by governments in ways that reduce their social and environmental impacts. Such efforts should be supported by complementary actions to secure community tenure rights and support their abilities to negotiate (or reject) the terms of any outside investments, with due consideration to investments in local production systems. The World Bank and other donors can support the implementation and testing of innovative approaches through their lending, and also support learning and exchange on good practices.

16. Ensure that all rural development and REDD+ investments take account of customary forest rights and include well-functioning procedures to guarantee FPIC.

Currently, the safeguard frameworks and processes in place for rural investments do not provide sufficient security to customary rights, and are mostly centered in statutory right systems. Where outside investments do occur in indigenous territories or community lands, well-functioning procedures to guarantee Free Prior and Informed Consent (FPIC) need to be in place. This means that any decisions that involve the use of natural resources in areas under statutory or customary land rights are planned and implemented with the FPIC of the affected communities. Meeting FPIC principles should also be considered a *sine qua non* in REDD+ initiatives supported by the international community. As mechanisms to secure FPIC are established, experience with their practical implementation should be assessed and shared, to improve their functioning over time, and to inform related efforts in other places. The World Bank and other donors can support such processes

of learning and exchange, including to inform the implementation of the Bank's own ESF provisions on FPIC.

- 17. Increase financing and technical support to tenure clarity and security as part of REDD+ initiatives.** At a time when the studied countries have made progress in decentralizing land administration in favor of indigenous peoples and local communities, governments need to demonstrate that REDD+ can contribute to this process and promote the consolidation of their rights. Governments must avoid implementing REDD+ initiatives in a centralized manner, controlled by national level agencies, in ways that risk rolling back important tenure reforms that have been achieved with so much effort. International agencies, both bilateral and multilateral, have a critical role to play in encouraging national governments and forest/environmental agencies in this regard, drawing on international frameworks and comparative experience.

While REDD+ may not be sufficient either as a political impetus or as a source of investments to advance forest tenure on its own, REDD+ initiatives can contribute by conducting research and analysis to understand the status of forest tenure in priority forest areas, investing in titling, conflict resolution or other measures

to secure tenure rights in these areas, and joining in national discussions and processes to advance tenure reforms. More secure indigenous and community forest tenure will contribute to the success of REDD+ initiatives, while related issues such as the ownership of carbon and benefit sharing need to be addressed through careful involvement of indigenous peoples and local communities. The World Bank and other donors working on land rights can do more to promote and support these kinds of investments, to the benefit of communities and climate mitigation.

Overall, investments in knowledge and learning will continue to be important for tenure reform efforts going forward. Experiences and lessons such as the ones identified here can help policy- and decision-makers progress beyond the initial phases of tenure reforms and build supportive institutional capacities, regulations, and procedures. Building and sharing knowledge is also important to inform the efforts of people anticipating or struggling to resolve similar challenges in other countries. These efforts can be further supported by tools that enable national actors to assess their own situations and identify where improvements are needed. While increasing tenure security remains a significant global challenge, the way forward is to learn by doing, through innovation and adaptation based on experience.

ENDNOTES

- 1 Sunderlin et al 2008; Food and Agriculture Organization 2002, Deininger 2003, Department for International Development 2007, Swedish International Development Cooperation Agency 2007.
- 2 Giovarelli, Renee, Beatrice Wamalwa and Leslie Hannay 2013. *Land Tenure, Property Rights and Gender: Challenges and Approaches for Strengthening Women's Land Tenure and Property Rights*. Washington, DC: US Agency for International Development.
- 3 Stevens, Caleb, Robert Winterbottom, Jenny Springer, Katie Reytar 2014. *Securing Rights, Combatting Climate Change*. Washington, DC: World Resources Institute.
- 4 Nelson and Chomitz (2011)
- 5 Other studies have demonstrated that deforestation rates in communally owned forestlands in Mayan forests in Mesoamerica and indigenous territories in Brazil are as low as in public-protected areas (for example, see Bray 2007, Ricketts, et al 2010, Nepstad, et al. 2006)
- 6 FAO 2012. *Voluntary Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests in the Context of National Food Security*.
- 7 UN Declaration on the Rights of Indigenous Peoples. Adopted September 2007 by the UN General Assembly.
- 8 RRI 2014. What Future for Reform? Progress and slowdown in forest tenure reform since 2002. Washington, DC: Rights and Resources Initiative.
- 9 FAO 2011. *State of the World's Forests*. Food and Agriculture Organization of the United Nations. Rome.
- 10 World Bank Group. 2016. *The Little Green Data Book*. World Bank Indicators.
- 11 *Comisión Hondureña de Desarrollo Forestal (COHDEFOR)*, previously also known as *Administración Forestal del Estado (AFE)*.
- 12 RRI 2014.
- 13 Management plan required for commercial forestry
- 14 Management plan required for commercial forestry
- 15 Management plan required for commercial forestry
- 16 Management plan required for commercial forestry.
- 17 Compensation only through government subsidies (e.g. bonds).
- 18 Lands not owned but controlled by Indigenous communities.
- 19 Tenure regime used for indigenous communities living in isolation or limited contact with non-indigenous groups.
- 20 Use limited for subsistence purposes only; no commercial extraction of timber or non-timber forest products is permitted.
- 21 Land can be leased and use as collateral; but sold only when support from community members is above 65% (in the Amazon and Andean regions) and 50% (Pacific coast region).
- 22 RRI 2014. As noted by RRI, alienation is not included in the bundle of rights required for tenure security, as the alienation of customary lands has often led to harmful consequences for communities (see RRI 2014, Annex 1).
- 23 Rights and Resources Initiative. 2014. What Future for Reform? Progress and slowdown in forest tenure reform since 2002. Washington, DC: RRI. Available at <http://rightsandresources.org/en/publication/what-future-for-reform>.
- 24 National Forestry Institute of Nicaragua, 2009. *National Forestry Inventory 2007-2008*,
- 25 Rights and Resources Initiative. 2014. What Future for Reform? Progress and slowdown in forest tenure reform since 2002. Washington, DC: RRI. Available at <http://rightsandresources.org/en/publication/what-future-for-reform>.
- 26 Instituto del Bien Común.
- 27 Instituto Del Bien Comun (Ibc). 2016. *Tierras Comunales: Mas Que Preservar El Pasado Es Asegurar El Futuro*. El Estado De Las Comuniades Indígenas Del Peru. Informe 2016.
- 28 Pineda, B. L. 2006. *Shipwrecked Identities. Navigating Race on Nicaragua's Mosquito Coast*. Rutgers University Press. 287 pp.
- 29 Molett, Sharlene. 2011. *Contested Autonomy: Globalization and Miskito Customary Property Rights ion the Río Plátano Biosphere Reserve*. In: *Property, Territory, Globalization. Struggles over Autonomy*. (Ed. By W. D. Coleman). Pp. 101-121.
- 29 In Spanish, this is often referred to as *saneamiento*, or the process of legally resolving boundary conflicts..
- 30 While there are no community tenure regimes in El Salvador, communities are allowed to access public forest lands to extract forest products for subsistence.
- 31 El Peruano. Normas Legales. 2014. *Ley que Establece Medidas Tributarias, Simplificación de Procedimientos y Permisos para la Promoción y Dinamización de la Inversión en el País*.
- 32 For example, the 2016-2020 UN-REDD Programme Strategy adopts Tenure and REDD+ as a cross-cutting theme.
- 33 RRI ERPIN study
- 34 RRI 2016.

Secure land tenure in rural landscapes is widely recognized as an essential foundation for achieving a range of economic development goals. However, forest areas in low and middle-income countries face particular challenges in strengthening the security of land and resource tenure. Forest peoples are often among the poorest and most politically marginalized communities in their national contexts, and their tenure systems are often based on customary, collective rights that have insufficient formal legal protection. This study on Securing Forest Tenure Rights for Rural Development aims to contribute to efforts worldwide to reduce poverty and strengthen sustainable management in forest areas. It does so by reviewing the progress of tenure reforms in six countries in Latin America, and drawing lessons to help advance the realization of these reforms and inform similar initiatives in other countries. The target audience of this work includes policy-makers who have responsibility for forests, climate change, land tenure, agricultural development and poverty reduction programs in rural areas, as well as for civil society organizations and international partners working on land tenure and natural resource governance. The study also aims to assist and inform the work of World Bank programs in rural development, environment and natural resources, agriculture, social development, climate change, and carbon finance, by increasing attention and support to indigenous and community forest tenure as it relates to these areas of work.