

RECOGNIZING INDIGENOUS AND COMMUNITY RIGHTS

Priority Steps to Advance Development and Mitigate Climate Change



SEPTEMBER 2014

An Immediate and Unprecedented Opportunity

There has been longstanding, and in many countries unmet, demand from Indigenous Peoples and local communities for the formal recognition of their rights to customarily owned lands, forests, and other natural resources. Today, there is unprecedented agreement among governments, the development cooperation community, private investors, and companies, that securing local land rights is an urgent, global priority. The reasons for this new and widespread support vary. Secure local land rights are increasingly recognized as a low-cost strategy to reduce forest carbon emissions; a means to reduce financial risk to investments and secure a sustainable supply of commodities; and a basic human right of the people whose lives and livelihoods rely on local resources.

What is also unprecedented is the feasibility of acting on this agenda to achieve immediate and globally relevant results. New opportunities to increase the land and resources owned and managed by Indigenous Peoples and local communities are being made possible by improved technology for mapping and land demarcation, implementation of international and national human rights frameworks, and growing evidence of the tangible social, environmental, climate, and economic benefits associated with community ownership of resources. Never before have so many stakeholders been aligned in this common agenda. And this alignment is creating a unique opportunity to secure the fundamental rights and livelihoods of millions of the world's poorest and most marginalized people, while simultaneously achieving global climate, environmental, and sustainable investment goals.

Current Status: Progress, Slowdown, New Momentum

After decades of struggle, Indigenous Peoples and local communities have won significant victories, including adoption of international instruments such as ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). More recently, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests (VGGT) have been adopted by

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virtually all countries in the world, and land rights have been a prominent part of ongoing negotiations on the post-2015 development agenda.¹

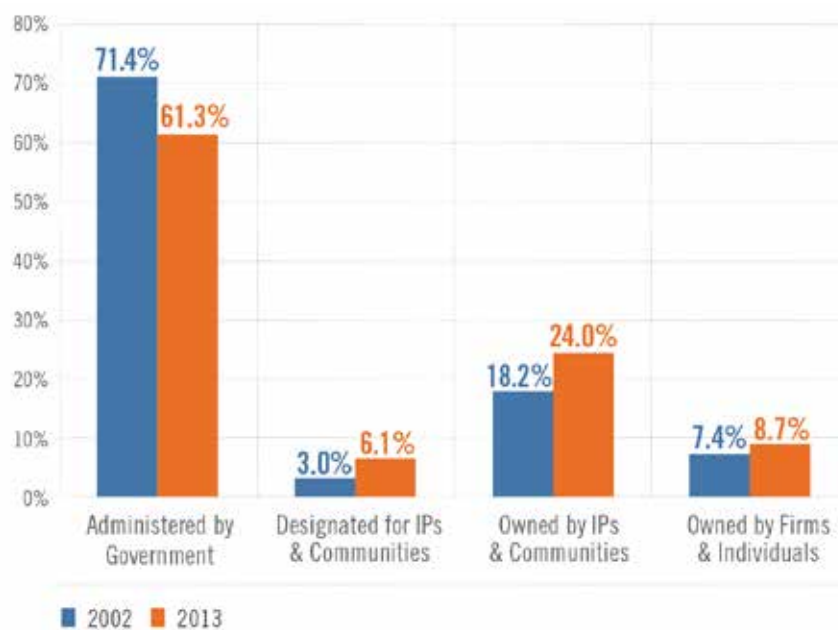
Supportive legislation has been enacted and implemented to recognize Indigenous Peoples and local community rights to land and forests in a number of countries. Between 2002 and 2013, 125 million hectares of forest land in lower and middle income countries (LMICs) was recognized as either owned or managed by Indigenous Peoples and local communities, bringing the global total to at least 513 million hectares. As of 2013, over 30 percent of forests in LMICs (and 15.5 percent of forests globally) are designated as owned or managed by Indigenous Peoples and local communities.²

Even with this positive change, governments still claim control of at least 61 percent of the developing world's forests (and 73 percent of the world's forests), much of which is also claimed by local people.³

Furthermore, research shows that there has been a global “slowdown” in the legal recognition of community land rights since 2008.⁴ Between 2002 and 2007, approximately three times more pro-community legislation was passed than between 2008 and 2013, and the legislation passed in the second period was substantively weaker, with no cases of legislation recognizing rights of ownership.⁵ Where progressive legislation and policy exists on paper, it is frequently not implemented or enforced. These limitations are compounded by the reality that the amount of land that Indigenous Peoples and local communities customarily claim is much larger than that which is statutorily recognized by governments. The challenge is greatest in Central and West Africa and the Mekong Basin, where over 90 percent of forest land is claimed by governments.⁶ By some estimates, more than 50 percent of the world's rural, forest, and dryland areas are customarily claimed, accounting for over two billion people.⁷

Since 2013, there have been several major shifts signaling new momentum for the recognition of local land rights, as well as the emergence of immediate opportunities for

FIGURE 1 Change in statutory forest land tenure, LMICs, 2002–2013, by percent



impact. In Indonesia, the world's second largest⁸ emitter of forest carbon, the Constitutional Court ruled in favor of recognizing Indigenous Peoples' land rights in forest areas, a ruling that the new government has pledged to uphold. In mid-2014, the Democratic Republic of the Congo, which holds Africa's largest remaining tract of tropical forest, adopted new regulations allowing local communities to obtain concessions to secure their forests. Similar progress in Liberia and India, as well as ongoing reform efforts in Cameroon, Senegal, Peru, Colombia, and a host of other countries demonstrate a growing movement for the recognition of community land rights.

Demonstrated Benefits for Climate and Development

Research emerging over the last decade demonstrates that even partial recognition of the customary land and forest rights of Indigenous Peoples and local communities has delivered major, tangible benefits to the world. For example, the one-eighth of the world's forests to which Indigenous Peoples and local communities currently have government-recognized rights contain over 37.7 billion tons of carbon,⁹ which is equivalent to 29 times the annual emissions from all passenger vehicles in the world.¹⁰ Increased legal recognition and government support for community forest tenure enhances carbon storage benefits by enabling communities to exclude loggers, extractive companies, and settlers from destroying their forests and releasing carbon into the atmosphere.¹¹

In Brazil alone, it is believed that strong community forest rights could prevent 27.2 million hectares of deforestation by 2050, equal to three years' worth of emissions from all Latin American and Caribbean countries.¹² Research in several countries also shows that deforestation rates inside indigenous and community forests with strong legal recognition and government protection are significantly lower than in forests outside these areas.¹³

Further, Indigenous Peoples and local communities have effectively protected their environment for thousands of years with little or no outside financial incentive, and limited government recognition. Globally, some 85 percent of high-biodiversity areas coincide with traditional lands.¹⁴ An analysis of forest protection across Asia, Africa, and

FIGURE 2 Carbon storage in forests owned and managed by Indigenous Peoples and local communities



Source: World Resources Institute, Rights and Resources Initiative. 2014. *Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change*.

Latin America found that the areas where communities had a role in management—such as multiple-use or indigenous-owned forests—were “even more effective” than strictly protected forests at reducing the incidence of fire, a proxy for wider deforestation.¹⁵ Clear property rights for local peoples have also greatly boosted the capacity of countries to achieve national-level forest restoration,¹⁶ as stronger rights to land and forests increase communities’ sense of security and their incentive to conserve.¹⁷

Research and practice also demonstrate that stronger community land rights can reduce conflict¹⁸ and decrease investment risk.¹⁹ One analysis of 71 cases of civil conflict and war across the world found that more than two-thirds of the conflicts were driven, at least in part, by contested claims around land.²⁰ A report by UNDP found that “insecurity of ownership, mismatches between state and indigenous forms of ownership, and unequal distribution of ownership are frequent sources of conflict and poor environmental decisions.”²¹ Companies operating in areas where land and forest tenure is insecure may face costs of up to 29 times higher than baseline, or even risk abandonment of their operations as a result of conflict with communities, as was the case with SN Power in Chile.²² Securing community rights to land and forest can help prevent conflicts from occurring,²³ as well as enable communities to engage and negotiate with companies and government representatives around investment projects.

Recognition of the land and territorial rights of Indigenous Peoples and customary communities is also a human right,²⁴ and is an essential foundation for maintaining and strengthening the unique cultures of Indigenous Peoples and local communities. Cultural diversity is not only worthy of celebration in its own right, but it is also central to achieving any sound and sustainable development. Land and resource rights enable Indigenous Peoples and local communities to more fully enjoy the human rights that are inherent and intrinsic to every person. This is particularly important as these groups are often among the most marginalized and threatened on the planet. For example, some 370 million Indigenous Peoples make up only five percent of the world’s population, yet account for nearly 15 percent of the world’s 900 million poorest people.²⁵

Securing Community Land Tenure is Feasible and Relatively Inexpensive

Historically, efforts to clarify and secure the rights of Indigenous Peoples and local communities to land and forest through mapping, demarcation, and titling have been hampered by a lack of appropriate technology and cost limitations. This is no longer the case. New technology—including simple GPS systems accessible through mobile phones, satellites, and low-level drones—has dramatically reduced the cost of mapping large territories and communities.²⁶ In fact, where communities have well-established, recognized, internal rules for distributing land rights, delineation of the rights of the group can achieve high levels of tenure security at a lower cost than securing individual rights.²⁷

The financial feasibility of securing the rights of Indigenous Peoples and communities at a significant scale is reflected in new research assessing the costs of demarcating, registering, and titling community land. It indicates that costs for mapping large contiguous areas range from less than US\$0.05 per hectare to US\$9.96 per hectare, averaging US\$3.68 per hectare.²⁸ Estimates are also provided for administrative units such as communes, villages, and communities.

Application of these estimates to real world cases yields striking results. For example, there are 168,772 villages with forests as land-use in India.²⁹ Based on the findings in Table 1, funding in the range of US\$67.5 million to US\$537 million could be used to better document and clarify the rights of some 88 million tribal peoples. The Indigenous Peoples’ Alliance of the Archipelago (AMAN) recently declared their intention to map 40 to 50 million hectares of community forests in Indonesia over the next seven years.³⁰ Depending upon whether they choose to map these lands as contiguous territories or separate communities, and of

TABLE 1 Costs of documenting and clarifying community land rights

Unit	Cost per Unit (US\$)	Average Cost per Unit (US\$)	Number of Cases Reviewed	Countries Included in Studies Reviewed
Large land areas (in hectares) ^a	.05 to 9.96i	3.78	10	Bolivia, Mozambique, Ecuador, China
Commune ^b	1,900 to 3,000	2,450	2	Cambodia, Vietnam
Community ^c	1,596 to 10,000	5,270	10	Mozambique, Liberia
Village	400 to 3,185	1,145	4	Tanzania, Lao PDR, Cambodia

* Information was available in multiple formats and units. Thus, cost estimates represent the range of components related to recognizing community land rights, from delimitation to formal land use planning and registration per unit of classification. These cost estimates cannot include the full suite of actions necessary to secure lands rights (such as necessary legislative reforms and government action). For details on this, please see Box 1.

i. Removed outlier data point of <US\$ 0.01, Mozambique.

a. Applicable to delineation of large territories.

b. Source material examines communes in Cambodia and Vietnam. The commune administrative unit is composed of multiple villages. In Vietnam, 10,745 communes comprise 648 districts, and 64 provinces.

c. Includes estimates for securing community land in Mozambique. One community may represent between 1,000 and 20,000 hectares, and several thousand rural people.

course depending upon the level of detail preferred, these findings suggest the costs to map their rights to 50 million hectares of their forest would fall somewhere between US\$189 million and US\$500 million.

Similarly, at least 513 million hectares of forest land globally have been recognized as owned or designated for Indigenous Peoples and local communities.³¹ These forests are already benefitting at least 374 million rural peoples³² and storing approximately 37.7 billion tons of carbon. Based on the above estimates, expanding demarcation, registration, and titling of recognized community forest land across the world by a factor of two may only cost around US\$1.9 billion, benefitting up to 748 million rural peoples and accounting for 75 billion tons of carbon,³³ more than double all of the carbon stored in biomass in the Congo Basin.³⁴

Box 1: How does one determine the cost of recognizing community land rights?

This exercise, first undertaken in the 2009 RRI analysis *Securing Tenure Rights and Reducing Emissions from Deforestation and Degradation (REDD): Costs and Lessons Learned*,³⁵ was expanded in the 2014 study *Analysis on the Costs of Securing Communal Land Rights: New Technologies and Approaches Offer Potential for Scaling Up*.³⁶ The analysis goes beyond the findings of existing reports to include comparative studies and consultation with land tenure experts to reveal the relatively modest levels of funding required to increase demarcation, registration, and titling in a sample set of developing countries.³⁷

The cost is determined by taking into account key steps in a collective land rights recognition process, generally comprised of a preparatory assessment, community and stakeholder engagement, recording of claims and governance rules, demarcation by state technical staff, and registration, titling, and administration. These discrete steps require differing amounts of time and effort, and may be accomplished separately or all at once. As a result, it is necessary to disaggregate the technologies and concrete actions implemented under each phase of the process, and estimate costs by factoring in staff time, materials, and logistics.

It is important to note that the cost estimates presented here reflect just part of the process for local communities and Indigenous Peoples to secure formal claims to land, as full recognition and security also require endorsement by governments, functional land administration institutions, and enforcement.

Comparing these costs to other related global initiatives reveals their feasibility. It is generally agreed that clear and secure forest tenure for Indigenous Peoples and local communities is a prerequisite to the success of REDD+ (the international program that aims to reduce emissions from deforestation and forest degradation as well as promote the conservation and sustainable management of forests) and for equitable benefit sharing and avoidance of a global “carbon grab.”³⁸ Since 2008, a combined US\$1.64 billion has been committed to prepare participating countries to implement REDD+,³⁹ and some studies have estimated annual funding requirements for REDD+ to be as high as the tens of billions of dollars.⁴⁰

Priority Steps to Seize the Opportunity

There is a clear and urgent opportunity to take advantage of alignment in the demand from multiple stakeholders for clear and secure community tenure to rural land. Strategies to capitalize on this new and unmet demand include: 1) increasing support to community organizations to enable them to better protect and advance their rights with governments and private actors; 2) directly engaging companies and suppliers of capital to expand and leverage their support for community land rights; and 3) increasing investments in the implementation of tenure reform projects.

First, support to community organizations should be expanded. Better technology and lessons learned have not only reduced the costs of demarcating, registering, and titling community land, but have also increased the capacity of Indigenous Peoples and community groups to advocate for necessary reforms to tenure laws and policies, engage and negotiate with companies, and undertake local implementation. Using inexpensive technology, communities and their partners are able to precisely map and delineate their lands, and identify potential conflicts with other land uses, which is of benefit to private investors and governments, as well. One example of such collaboration is the recent map of overlapping land claims in the Pacific Basin of South America.⁴¹ This project, coordinated by the Instituto del Bien Común in collaboration with 13 civil society organizations from Colombia, Ecuador, Panama, and Peru, illustrates the forest areas owned or controlled by Indigenous Peoples and local communities (roughly 41 percent of the Basin) that are overlapped by large-scale land projects and government controlled protected areas.

Second, companies and suppliers of capital must be engaged to update operational policies, to increase transparency in their supply chains and portfolios, adopt rights-based business models, and provide support for clarifying local and indigenous tenure. One example of engagement is the Interlaken Group, composed of companies including Nestlé, Rio Tinto, Coca-Cola, and Unilever, among others, as well as representatives from civil society and indigenous organizations. The entities making up the Interlaken Group are committed to expanding and leveraging private sector action to ensure that community land rights are secure and respected. The Group is currently drafting a set of guidelines to operationalize the VGGT for companies, which includes respect for the principles of free, prior, and informed consent (FPIC) as a main component. Another initiative is the Behind the Brands campaign, led by Oxfam. By scoring the supply chains of the world’s largest food and beverage companies according to a number of sustainability indicators, including rights and access to land, Oxfam has prompted a “race to the top,” yielding a number of new company commitments to policy development.

Third, the amount of capital invested in implementing community tenure reform initiatives must be increased, and more targeted and strategic instruments established. Much of the historical and existing donor support for securing tenure has focused on individual rights, urban areas, and agricultural lands, and is inadequate to meet the current demand from multiple stakeholders for secure community tenure. For example, only about six percent of World Bank funding for land tenure since 2004 was committed to

securing community rights to forests.⁴² The recognition of collective land rights remains on the margins of many international initiatives, and there are no international instruments dedicated to addressing this global issue. Conventional development organizations and instruments cannot respond with the nimbleness required to effectively collaborate with the local organizations and private actors who are creating the new opportunities to secure local land rights. One new mechanism to address this demand is the International Land and Forest Tenure Facility (the Facility) (see Box 2). This new instrument will leverage and respond to the growing demand for secure tenure from Indigenous Peoples and local communities, governments, the private sector, and the development community.⁴³

Conclusion

The world is faced with an unprecedented opportunity to secure the customary land and resource rights of millions of its most marginalized peoples, and research shows that securing these rights yields multiple globally relevant benefits. New social and technological capacities make it possible to vastly increase the amount of land recognized, and the costs to do so are reasonable, even in relation to the scale of funds invested in initiatives, such as REDD+, for which secure tenure is a prerequisite for success. As the entities influencing land and forests continue to evolve, there is a unique opportunity to create new allies and mechanisms to support and operationalize tenure security for Indigenous Peoples and local communities, delivering on a major tenet of sustainable development.

Box 2: The International Land and Forest Tenure Facility

The Rights and Resources Initiative (RRI) has catalyzed the design of the International Land and Forest Tenure Facility, an international mechanism to provide financial and technical support for implementing tenure reforms in developing countries. Key design features of the Facility include:

- Establishment as an independent institution linked to the major international climate and land rights initiatives;
- Multi-stakeholder governance, including representatives of rights holders, multilateral institutions, civil society, and private sector;
- Responsive to the needs of Indigenous Peoples and local communities, with a particular focus on customary, community-based property rights in forest and dryland areas; and
- Provision of capital and technical expertise for tenure reform projects, and a convening platform for leading actors in the land sector to coordinate commitments and develop shared strategies.

The Facility, incubated by RRI, aims to be fully operational by the end of 2015. An Advisory Group, composed of individuals from Tebtebba (Indigenous Peoples' International Centre for Policy Research and Education), the Centre for Environment and Development, Cameroon (CED), as well as UN-REDD, FAO, the IFC, Sida, Oxfam, and private companies, has been established and will guide the incubation and establishment of the Facility.

Support for the design of the Facility was provided by the governments of Sweden, Germany, and the United Kingdom, and the Ford Foundation. The Government of Sweden committed the first operational funding in September 2014, in the amount of SEK100.5 million (approximately US\$15 million). Other governments are actively considering support.

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1238 Wisconsin Avenue NW
Suite 300
Washington, DC 20007
www.rightsandresources.org