

## Land Tenure and REDD+: The good, the bad and the ugly

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Article prepared for presentation at the International Society of Ecological Economics (ISEE) conference, Rio de Janeiro, 16-19 June, 2012

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## **Abstract**

A number of international donors, national governments and project proponents have begun to lay the groundwork for REDD+, but tenure insecurity – including the potential risks of land grabbing by outsiders and loss of local user rights to forests and forest land – is one of the main reasons that many indigenous and other local peoples have publicly opposed it. Under what conditions is REDD+ a threat to local rights, and under what conditions does it present an opportunity? This article explores these issues based on available data from a global comparative study on REDD+, led by the Center for International Forestry Research, which is studying national policies and processes in 12 countries and 22 REDD+ projects in 6 countries. The article analyses the extent to which tenure concerns are being addressed at both national and project level in emerging REDD+ programs. Results so far suggest that there is little reason to believe REDD+ strategies will make significant changes in the status quo. National level REDD+ discourses rarely focus on governance or tenure issues and the organizations that do have little influence. At the local level, tenure is not easy to resolve where conflict is serious, and piecemeal project interventions are insufficient in the absence of broader, national programs. At the same time, REDD+ may have put the issue of rights for indigenous and local people on the international and national agendas as never before.

**Keywords:** community forestry; forest tenure reform; indigenous peoples; tenure security; property rights; customary rights

## 1. Introduction

Clear and secure land tenure rights have been identified as one of the key elements for successful conditional payment schemes promoting forest conservation, including strategies for reducing emissions from deforestation and forest degradation (REDD+). REDD is a performance-based mechanism whereby funds will be used to compensate developing countries for the reduction of forest carbon emissions as compared to a national baseline; the 'plus' refers to the inclusion of carbon stock enhancement. It is likely to involve both funds and compliance markets.

REDD+ has been met with considerable controversy. On the one hand, serious attention to the drivers of deforestation requires challenging 'business as usual' interests that lead to forest conversion. Though some of these actors have been attracted to the potential economic benefits of REDD+, it is not surprising that others would resist the change. On the other hand, grassroots actors, such as indigenous and other rural communities and their allies, have raised objections as well, particularly in relation to the potential risks of land grabbing by outsiders and loss of local user rights to forests and forest land. These groups have brought substantial international attention to their concerns under the banner 'No rights, no REDD' (for a summary, see Tauli-Corpuz et al., 2009).

Under what conditions is REDD+ a threat to local rights, and under what conditions does it present an opportunity? While some 'carbon cowboys' have convinced local leaders to sign away their forest rights (Babon, 2011), in others, project-level REDD+ proponents are working with communities to secure management rights, land titles and/or future forest income (Duchelle et al., 2011; Resosudarmo et al., 2011).

A number of international donors, national governments and project proponents have begun to lay the groundwork for REDD+, though there has been a recent slowdown in these preparations, in part due to the failure to reach a climate change agreement and the lack of a secure carbon market (Sunderlin and Sills, forthcoming). At the same time, forest tenure issues have been increasingly recognized as important:

- The essence of REDD+ is to reward those who maintain or enhance the carbon sequestration of forests and compensate them for lost opportunities; this includes direct payment schemes, which require not only clear rights to land but also the ability to demonstrate exclusion rights, which includes the right and means to prevent third parties from changing land cover.
- The right holders to forest carbon must be held accountable in the event that they fail to fulfill their obligation - the 'conditional' part of conditional incentives.
- When tenure is unclear or not formalized, forest people may be excluded from forests and/or from participation in REDD+ benefits; also, if REDD+ increases the value of standing forests, it may lead to a resource rush that places the rights of current residents at risk.
- REDD+ will inevitably prohibit certain uses of forest resources; this must be done with due process and compensation, and without increased hardship, for poor forest peoples (Sunderlin et al., 2011).

If tenure clarity and security are broadly recognized as an important requirement for REDD+, significant attention should be given to resolving tenure conflict and clarifying tenure rights in preparation strategies. In practice, however, research suggests that progress has been slow. With regard to equity concerns, the question of resolution also raises the issue as to who will benefit from ‘clarification’ or reform policies.

This chapter assesses the experience with REDD+ strategies at national and project levels so far. What are the primary tenure problems being faced in each country and to what extent are these being recognized and addressed at the national level? What are the problems being faced at the REDD+ project level, how are proponents addressing them, and what are the obstacles to resolution? The findings suggest that, at the national level, there is little reason to believe that REDD+ will make substantial changes in the status quo regarding tenure rights of local communities, though there are notable developments. At the local level, proponents are working to secure tenure rights, but these piecemeal interventions are insufficient in the absence of broader, national programs. Nevertheless, REDD+ may have put the issue of rights for indigenous and local people on the international and national agendas as never before.

The research findings presented here are drawn from the Center for International Forestry Research (CIFOR) Global Comparative Study (GCS) on REDD+, drawing on data collected from 2009 to early 2012. The project has studied national level processes in 12 countries and 22 project interventions in six. This article focuses on the six countries studied at both national and project level scales. Those are: Brazil, Cameroon, Indonesia, Tanzania and Viet Nam; national scale data is available for Peru but project level information is only preliminary.

The rest of this article is organized as follows. The next section examines concerns about forest tenure rights under REDD+. The following section outlines the GCS-REDD methods relevant to the research discussed here. Section IV presents the research findings. The final section presents the discussion and conclusions.

## **2. ‘No rights no REDD’: Taking stock**

The ‘No rights no REDD’ movement has arisen primarily in response to the failure of climate negotiations to guarantee a binding commitment to indigenous rights and safeguards for indigenous and other forest people. Declarations from movement advocates since the December 2012 COP in Durban, South Africa, refer to potential for REDD+ ‘to result in “the biggest land grab of all time,”... threatening the very survival of indigenous peoples and local communities,’ and vulnerability to ‘carbon cowboys, without adequate and binding mechanisms to ensure that the rights of indigenous peoples and local forested and agricultural communities are respected’ (<http://noredd.makenoise.org/indigenous-peoples-condemn-climate-talks-fiasco-and-demand-moratoria-on-redd.html>). At the heart of these concerns is the insecurity of forest land tenure rights and the failure to assure free prior and informed consent in all matters affecting indigenous lands.

Much has been written about the centralization of forest tenure historically (e.g. Dixon and Sherman, 1991; Fay and Michon, 2003; Harrison, 1992; Peluso, 1992; Pyne, 2009;

Vandergeest and Peluso, 1995; Westoby, 1987, 1989), and the wave of reforms formalizing forest tenure rights since the late 20<sup>th</sup> century (Cousins, 2007; Larson et al., 2010; Meinzen Dick and Mwangi, 2008; Poffenberger, 2001, 2006; Sikor and Nguyen, 2007; Sunderlin, 2011). White and Martin (2002) and Sunderlin et al. (2008) document the shift in forest ownership from the state to more substantial – though still minority – community control, referring to this change as the ‘global forest tenure transition’ (Sunderlin, 2011).

It would be a mistake, however, to assume that community rights are now broadly recognized and secure. The forms and extent of rights recognition has been very varied, in some cases involving the titling of, or formal granting of secure long-term rights, to large indigenous territories; but in others, the ‘transition’ has consisted of land grants to small community forests, while in the most timid reforms communities have received new, temporary use rights that are an improvement over the past but are far from constituting substantial reform (Larson et al., 2010).

In addition, though there has been important international attention to the restoration and formalization of customary rights, this shift is not seen in all countries. And even where new laws or policies are on the books, they have not always been implemented; implementation has often been fraught with problems and met with resistance (Larson, 2011); and some countries that have made significant strides in recognizing community forest rights have tried to roll back these policies more recently (RRI, 2011).

Larson (2011) identifies three types of obstacles to the implementation of reforms in favor of indigenous and other communities living in forests: 1) political and economic interests of actors competing for forest land and resources, including some state actors; 2) limited technical, human and economic capacity to carry out accurate and effective demarcation and titling; and 3) ideological barriers, such as opposition to, or concerns with, the idea that forest dwellers can be effective forest stewards (there is ample evidence to suggest that secure local rights can but does not always lead to improvements in livelihoods and forest sustainability, but that discussion is beyond the scope of this paper). These obstacles are deeply rooted in colonial and post-colonial institutional structures (Lynch and Talbott, 1995; Peluso, 1992).

REDD+ strategies could place rights at risk in a number of ways. If forest tenure is currently insecure, unclear or in conflict, more powerful actors could gain rights to the land in the interest of obtaining REDD+ benefits. On state-owned lands, customary land users without formal rights could be subject to new rules and regulations, including restrictions on land use that lead to new hardships. If forest tenure is currently secure, unknowing or unscrupulous leaders could sign away rights and/or commit to obligations without fully understanding the consequences or obtaining the consent of those who live on the land. If carbon rights are not clarified, whether or not land tenure is secure, benefits may not be distributed in a way that fairly recognizes the efforts of those who contribute to carbon emissions reductions.

The case of Papua New Guinea provides insights into these concerns. Papua New Guinea is unique amongst REDD+ countries as around 97% of its land area, and virtually all of its forest, is owned by customary landowners and regulated by custom, not by the State.

Customary land ownership is enshrined in the Constitution; and customary landowners must be consulted and give their informed consent for any developments on their land. Indeed, landowners can veto any developments of which they disapprove. With reference to the ‘bundle of rights’, customary landowners have rights of access, use, management, and exclusion. However, customary land cannot be ‘sold’.

The seemingly strong *de jure* customary tenure rights in Papua New Guinea make the country an interesting case study for REDD+. In many ways, landowners in Papua New Guinea are in an extremely powerful position, as resource owners, to participate in REDD+ on their own terms. However, in practice, many landowners are not aware of their rights – leaving them vulnerable to exploitation. In 2008-2009, media reports began to emerge of landowners signing over carbon rights to suspect carbon project developers – dubbed ‘carbon cowboys’ by the media – with virtually no awareness of what they were doing and no legal framework within which to do it. At one stage, one of the most notorious ‘carbon cowboys’ claimed to have negotiated about 90 different carbon deals with landowners, despite the absence of a national REDD+ strategy.

Negative attention from the international media, combined with pressure from NGOs and donors, appears to have brought substantial attention to the risks of REDD+ for communities. The government of Papua New Guinea tried to control the ‘carbon rush’ by requiring any groups interested in carbon trading to have written authority to operate in the country and to be registered with the Office of Climate Change. The government also urged landowners not to sign up to any carbon deals with outside project developers until there was a policy and legal framework in place. Papua New Guinea’s ‘carbon cowboys’ appear to have largely disappeared, and the contracts they negotiated are generally assumed to have no validity.

The Papua New Guinea case is insightful for at least two reasons. First, it illustrates the insecurity of even apparently very secure customary rights. Second, it demonstrates the importance of international attention and concern over tenure rights – and how that attention brought about a response and improved policy. Similar shady dealings are being uncovered elsewhere, such as a recent high profile case of an international company apparently buying up rights to 2.3 million ha of forest from an indigenous tribe for USD 120 million in the Brazilian Amazon (Sommer, 2012). Since such deals with indigenous groups contradict national laws for indigenous areas, and Brazil has yet to finalize its national REDD+ strategy, such contracts will likely be considered void.

REDD+ may present risks for local tenure rights, but it can also be used as an incentive to support tenure reform. For example, REDD+ funds could be used to secure the borders of indigenous territories where the primary driver of deforestation and forest degradation is illegal land invasions (Larson et al., 2010b). Several high level actors on the REDD+ stage have begun to argue that tenure security for local communities is a requirement for REDD+. The United Kingdom’s climate change minister stated, ‘Securing fair land tenure must be the foundation of REDD’; his reasons referred not only to ethics but also to business, suggesting a stronger constituency in support of reform (Barker, 2011). In an unprecedented move and in a very strong pro-business context, the chair of Indonesia’s REDD task force stated, ‘Finding the appropriate land tenure arrangement is a prerequisite

for sustainable development and livelihood' and strongly recommended recognizing customary rights in forests (Mangkusubroto, 2011; RRI, 2012).

The issue of forest tenure has received unprecedented attention under REDD+. The cases studied here demonstrate both large leaps and, more commonly, small steps forward in the recognition, or at least clarification, of forest tenure rights. In all cases there is far more to be done.

### **3. Methods**

GCS-REDD is a four-year research project (2009-2013) that aims to provide policy and technical guidance to REDD+ stakeholders. The research reported in this paper presents a combination of results from Component 1, which addresses national level stakeholders, policies and processes, and Component 2, which focuses on sub-national REDD+ project sites.

Initially six study countries were selected on the basis of the following criteria: large tropical forest countries where REDD+ is being pioneered and that have many project sites (Brazil, Indonesia); diversity of stages on the forest transition (e.g. high deforestation in Indonesia and low in Viet Nam); convenience of a CIFOR office in the country (Bolivia, Brazil, Cameroon, Indonesia, Viet Nam); and strong donor interest (Brazil, Indonesia, Tanzania). Bolivia had to be removed from the study when the government ceased being involved in REDD+ and was replaced with Peru, which by mid 2011 had even more emerging sub-national REDD+ pilot projects than Brazil (35 as of June). The two project components share this set of 6 countries (Brazil, Peru, Cameroon, Tanzania, Indonesia and Viet Nam), though Component 1 includes another 6; of the latter, only some aspects of the Papua New Guinea case are included to enrich the analysis.

In analyzing national REDD+ policy arenas and emerging strategies, researchers developed five areas of inquiry. These include a country profile, media analysis, policy network analysis, policy content analysis and a policy study with a focus on political economy questions. The national level analysis reported here involved results from country profiles, media analysis and policy network analysis.

The country profiles are based on a literature review and stakeholder interviews and address contextual conditions in which REDD+ mechanisms are emerging. It describes drivers of deforestation, general and forest sector governance, natural resource and carbon tenure, relevant sector policies and programs and design options for REDD+ in terms of monitoring, reporting and verification; financing; benefit and cost sharing; alignment of institutions and policies; coordination; and identification of key actors, consultation and policy events.

The media analysis investigates the main areas of debate within the REDD+ policy arena and identifies the actors shaping public debate and influencing the policy process. It involves identifying 3 major national daily media outlets in each country, analyzing published articles on REDD+ since 2005 and conducting semi-structured interviews with journalists (radio, TV, etc).

To understand structural conditions and policy networks in REDD+ arenas, Component 1 used social network analysis. In-depth interviews and a survey are conducted with key actors in the policy domain to investigate actors' roles and perceptions, networks of influence, information and financial support, and to identify coalitions and other sub-groups in each country's policy arena.

The Component 2 research aims to provide robust empirical evidence of the performance of REDD+ through a counter-factual approach called BACI (before-after/control-intervention) (Jagger et al., 2010). This method permits the comparison of intervention (REDD+) and control (non-REDD+) villages both before and after the introduction of REDD+ conditional incentives. The field research includes 22 project sites, and over 170 control and intervention villages and 3500 household surveys. This article reports on interviews with 19 proponents and early process outcomes in 71 intervention villages.

Four villages were selected at each project site (with two exceptions: one project only had two villages and in another, five were selected). These villages were selected from a sample frame of up to 15 intervention villages. The research was conducted through formal survey interviews with the technical staff of proponent organizations and with village respondents. Two survey forms were used with proponents: a proponent appraisal compiling general information about the project intervention strategies and containing several general questions on tenure; and a survey on participation and tenure going into depth on these issues. At least one technician per project was interviewed in these two surveys. The village interviews were conducted by first gathering secondary data from people judged knowledgeable about the village and then holding a focus group meeting with 10-15 villagers (see Sunderlin et al., 2008 for a detailed explanation of the methods).

#### 4. Evidence from the field

In five of the six countries studied, forests are primarily public and formally administered by the state (Table 1). The exception is Brazil, where 73% of forests were owned by individuals, firms, communities and indigenous people in 2008; official data show a shift of almost 200 million from public to private hands from 2002 to 2008 (Sunderlin et al., 2008). The other countries have far less private land. In five of six countries, a portion of public land has been assigned for temporary use by communities and indigenous people, as well as by individuals in Brazil.

**Table 1. Forest tenure distribution**

Country	Public (millions of has, %)		Private <sup>a</sup> (millions of has, %)	
	Administered by government	Designated for use by communities and indigenous people	Owned by communities and indigenous people	Owned by individuals and firms
Brazil <sup>b</sup>	88.6 (21%)	25.6 (6%)	109.1 (26%)	198.0 (47%)
Peru	42.3 (67%)	2.9 (5%)	12.6 (20%)	5.3 (8%)
Cameroon	20.1 (95%)	1.1 (5%)	0 (0%)	0 (0%)
Tanzania	31.8 (89%)	1.6 (4%)	2.1 (6%)	0.1 (0%)
Indonesia	121.9 (98%)	0.2 (0%)	0 (0%)	1.7 (1%)
Viet Nam	9.7 (73%)	0 (0%)	3.5 (26%)	0.1 (0%)

Source: Sunderlin et al., 2008, except for Viet Nam (Dahal et al., 2011)

<sup>a</sup> ‘Ownership’ according to the Rights and Resources Initiative and in this research includes titled lands and those granted unconditionally through long-term, secure mechanisms other than titles (see Sunderlin et al., 2008).

<sup>b</sup> Other sources have found that 24% of the Amazon is unclassified public land and 13% is comprised by land settlement projects for individual landholders (Börner et al., 2010).

#### **4.1 National level problems and policy**

Research at the national level identified serious problems with land tenure in all of the countries studied (Table 2). The results presented here draw on the country profiles, media discourse analysis and policy network analysis, described above. Common issues include overlapping titles or claims, land grabbing and elite capture, outdated or nonexistent land cadastres, among others. In particular, in Indonesia, Viet Nam, Cameroon, Tanzania, and to some degree in Peru, there is a substantial gap between formal and customary rights.

Many problems for people and communities living in and near forests stem from the sense of insecurity generated by the public nature of land and forest ownership. These problems manifest themselves in a number of ways. In some cases the issues relate more to conflict and overlapping claims with other stakeholders, or the inability to exclude unwanted or problematic outside forest users. To some extent these problems exist in all the countries studied, at least in some locations; also, such overlaps and conflicts also may exist in lands that have been recognized or titled (as is mentioned in Brazil), as title alone does not guarantee the ability to protect one’s borders. These issues will be discussed further, below, in reference to the project sites.

In other cases, the conflict is directly with the state, for example, with regard to land zoning or classification systems, and when the state asserts the right to grant concessions or use rights to other stakeholders on occupied land. This is a common problem in Indonesia, Peru and Cameroon, with regard to oil palm, logging and mining concessions in particular (Dkamela, 2011; Indrarto et al.; 2011, Piu et al., 2011); violent conflict over mining concessions on indigenous lands in Peru has resulted in several deaths and reached influential international news media (see, for example, <http://www.rawstory.com/rs/2011/06/25/peru-halts-canada-mining-operations-amid-protests/>; <http://www.economist.com/node/18898513>). In Papua New Guinea, there has been a rapid increase in the granting of Special Agriculture and Business Leases (SABLs) – which are now thought to cover over 5 million hectares or 10% of the country - to private companies for periods of up to 99 years. There is widespread concern that many, or a majority, of these leases have been obtained without the consent of customary landowners, leading some commentators to suggest the country can no longer claim to have 97% of land under customary tenure (Filer, 2011). There is also conflict with the state over carbon rights, which has not yet been resolved in any of the countries studied.

In addition, in Cameroon, the community forest concession model is seen as a weak response to customary claims, providing only temporary and fairly easily revoked use rights to small and degraded forest areas (Dkamela, 2011). In Tanzania, in spite of the Village Land Act, which recognizes customary rights whether or not the land is registered, the draft National REDD strategy contradicts this and would permit the state to classify

unregistered village customary land as ‘general’ (or state) land (Dokken et al., unpublished results). There is a similar problem in Indonesia, where the Basic Agrarian Law recognizes customary land rights, but the Forestry Law only recognizes customary forest as a subset of state forest (Indrarto et al., 2011). In spite of the recommendation to address this problem by the chair of Indonesia’s REDD task force, mentioned above, significant opposition from the Ministry of Forestry and the private sector still has to be overcome if this is to go beyond discourse.

In Viet Nam land classified by the government as ‘unused’ is in fact under customary tenure not formally recognized by law. Though new land allocation certificates known as red books grant forest rights for 50 years, the land is often degraded or infertile and the program (Forest Land Allocation, or FLA) does not permit joint ownership at the household and community levels, thus limiting the rights of women and undermining upland production systems that are based on joint property approaches (Pham et al., in press).

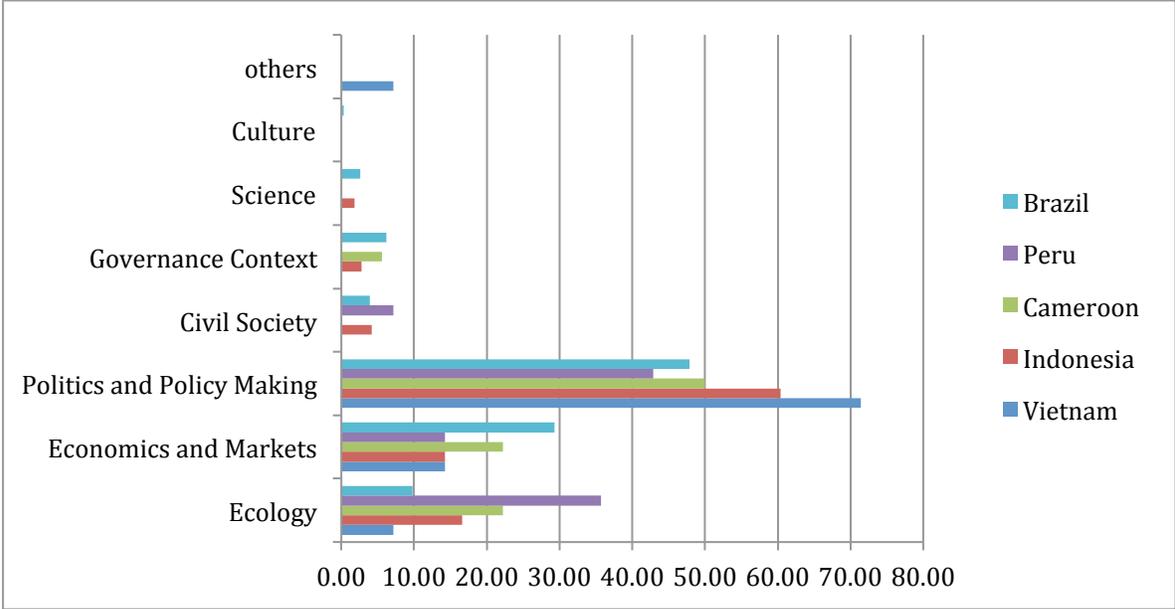
What is most striking about these problems in the context of REDD+ is that they are rarely being addressed by national policies, in spite of their implications for REDD+ initiatives. That is, research so far suggests that there is little reason to believe REDD+ strategies are making significant changes in the status quo with regard to land and forest tenure rights. Analysis provided by country profiling shows few important new tenure initiatives in relation to the problems identified. Although tenure is often mentioned in REDD+ policy documents and was a very popular topic during the stakeholder interviews conducted in the context of the country profiles, the debate remains at a rhetoric level. This finding was confirmed by a study of REDD Preparation Proposals (RPPs) undertaken by World Resources Institute, which identified the need for clearly defined reform processes with milestones and targets during the readiness phases (Williams et al., 2011). The policy measures listed in Table 2 most often refer to policies that are already in place and are insufficient to solve the problem, or in some cases are another source of tenure problems. For example, existing land allocation and registration initiatives have sometimes generated insecurity due to lack of technical capacity and financial resources, inconsistent rules and procedures and the failure to ‘match’ the policy with on-the-ground reality.

Among the cases, Brazil is clearly an exception. The Brazilian government launched an important land regularization program, which links land tenure reform with environmental compliance in the Amazon. It has also recognized and delineated customary lands, and this process continues, though it is still slow and riddled with problems. The other countries have at best taken small steps in comparison.

Governance and tenure issues in particular are largely absent from REDD+ discourse as identified in national media in most of the researched countries. An analysis of more than 500 national newspaper articles on REDD+ published between 2005 and 2009 in five of the six countries (data on Tanzania is not yet available) demonstrates that governance issues did not feature prominently in the way media articles were ‘framed’ in any of the countries (Figure 1). A media frame is ‘a broad organizing theme for selecting, emphasizing, and linking the elements of a story such as the scenes, the characters, their actions, and supporting documentation’ (Bennet, in Boykoff, 2008, p. 555). In practice a frame is a conceptual lens that brings certain aspects of reality into sharper focus

(emphasizing a particular way to understand an issue), while relegating others to the background. A closer look at subtopics related specifically to tenure reform and carbon rights under the meta topic ‘Politics and policy making’ confirmed their absence. Only in Indonesia and Brazil were media articles explicitly framed around these issues: in Brazil, in 11 articles the subtopic ‘REDD+ and indigenous rights policies’ was advocated by representatives of rights organizations and subnational state actors; in Indonesia one article used this frame, which was advocated by an international research organization, and a second article was concerned with the establishment of carbon rights and was supported by a national level government actor. Preliminary analysis of articles from 2010–2011 in Indonesia, Viet Nam and Peru show no significant changes.

**Figure 1: Meta topics in national media articles (in % of total analyzed media frames per country)**



Source: Larson et al. (in press)

Nevertheless, by examining individual position statements of advocates or adversaries who responded to the issues framed in these articles, we identified a number of stances related to governance. In Indonesia, Brazil and Peru, actors stated that REDD+ will require major governance and institutional reform. In Indonesia more than 10% of all positions expressed (27 of 258) demonstrated concern that REDD+ risks dispossessing or reducing access to forest resources and harming traditional forest users. These preliminary findings indicate that although articles are rarely framed around these concerns, a number of actors position themselves around them.

As in the Indonesian example, the organizations that are concerned about tenure are mainly actors from international environmental Non-Governmental Organizations and domestic civil society organizations. An actor-level analysis showed, however, that neither of these organizations are perceived by other actors in the policy arena as influential in most of the national policy networks, where Ministries of Forestry and other state entities are at the

centre of decision making. In some countries civil society actors are less prominent in general, for example in Viet Nam, hence it is not surprising that such positions did not appear explicitly, although equity in general was discussed. Additionally, policy network analyses, which study coalitions in the REDD+ arena, were conducted in 2011-12 in Cameroon, Viet Nam, Indonesia and Brazil. Preliminary findings indicate that the coalitions of which these international and national NGOs are members are less central in decision making in most countries.