

Customary Tenure Systems and REDD+

*Ensuring Benefits for
Indigenous Peoples*



Customary Tenure Systems and REDD+: Ensuring Benefits for Indigenous Peoples



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Table of Contents

Acknowledgments	vii
Acronyms	ix
Glossary	xi
Synthesis	1
<i>by Wilfredo V. Alangui</i>	
Fiji: Navigating a Dual Tenure System and REDD+	
<i>by Akanisi Sobusobu Tarabe</i>	
Abstract	23
Introduction	24
Study Design	24
The Context: Fiji	28
State Laws and Policies on Land and Forest Tenure Systems	28
International Laws and Implications on Rights of Indigenous Peoples	31
Experience with REDD+	39
Conclusions and Recommendations	41
Nepal: Customary Resource Management a Foundation for REDD+	
<i>by Pasang Dolma Sherpa, Pasang Sherpa PhD, Arun Rai, Pemba Thile Sherpa</i>	
Abstract	45
Introduction	45
The Study	46
Indigenous Peoples and Concept of Customary Tenure	49
International Legal Framework	51
National Legal Policy Framework	52
Customary Tenure System and REDD+	56

REDD+ Institutional Structure from Central to Local Level	56
Customary Tenure Systems in Chitwan and Bardiya	58
Indigenous Women and Customary Tenure System	61
Indigenous Peoples and REDD+ Implementation	62
Assertion of Customary Tenure Rights through REDD+	64
Summary of Key Findings and Conclusion	65
Recommendations	66

Vietnam: Customary Tenure Rights and REDD+ Potential to Promote Legal Recognition

by James Israel Alim, Vu Thi Hien, Ho Thanh Thuy, Hoang My Lien

Abstract	74
Introduction	74
Research Methodology	75
National Legal Framework on Land and Forest Administration	76
Laws and Policies Impacting Customary Tenure Systems	81
Customary Tenure Systems of Ethnic Groups in Thai Nguyen and Thanh Hoa	85
Ethnic Women and Customary Tenure System	92
Customary Tenure Systems and REDD+ Implementation	94
Summary of Key Findings	98
Recommendations	100



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Acronyms

ACMA	Adaptive Collaborative Management Approach
ALTA	Agricultural Landlord and Tenant Act
ANSAB	Asia Network for Sustainable and Agriculture and Bioresources
CBD	Convention on Biological Diversity
CBS	Central Bureau of Statistics
CERDA	Centre of Research and Development in Upland Areas
CFUG	Community Forest Users Group
CSOs	Civil Society Organizations
CSR	Colonial Sugar Refinery
CTS	Customary Tenure System
DFO	District Forest Officer
DoF	Department of Forest
DPC	District People's Committee
ER-P	Emission Reductions Program
ER-PD	Emission Reductions Program Document
EU	European Union
FAO	Food and Agriculture Organization
FCPF	Forest Carbon Partnership Facility
FECOFUN	Community Forestry Users Groups of Nepal
FGD	Focus Group Discussion
FPIC	Free, Prior, and Informed Consent
FSS	Forestry Sector Strategy
GoN	Government of Nepal
ICCA	Indigenous and Community Conserved Areas
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICIMOD	International Center for Integrated Mountain Development
ILO	International Labor Organization
INGOs	International Non-Governmental Organizations

JICA	Japan International Cooperation Agency
KII	Key Informant Interview
LOU	Land Owning Unit
LURCs	Land Use Right Certificates
LUU	Land Use Unit
MARD	Ministry of Agriculture and Rural Development
MoFSC	Ministry of Forest and Soil Conservation
MONRE	Ministry of Natural Resources and Environment
MPFS	Master Plan for the Forestry Sector
NCC	Northern Central Coast Region
NEFIN	Nepal Federation of Indigenous Nationalities
NFDIN	National Foundation for Development of Indigenous Nationalities
NFN	NGO Federation Nepal
NGOs	Non-Governmental Organizations
Norad	Norwegian Agency for Development Cooperation
NR	Non-REDD+
NRAP	National REDD+ Action Program
NTFP	Non-timber forest products
PPC	Provincial People's Committee
REDD	Reducing Emissions from Deforestation and Forest Degradation
REDD+	Reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries
RIC	REDD Implementation Centre
RPP	Readiness Preparation Proposal
RTL	Register of iTaukei Land Register of iTaukei Land
SESA	Strategic Environmental and Social Assessment
SFE	State Forest Enterprises
SUF	Special use forests
SNV	Netherlands Development Organization
TLC	iTaukei Land Commission
TLTB	iTaukei Land Trust Board
UDHR	Universal Declaration of Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
WB	World Bank
VBK	Vola ni Kawa Bula



Glossary

Adivasi Janajati	Indigenous peoples of Nepal
Ailani	Public land
Badghar	Headman in a community. An informal customary institution, the Badghar system is prevalent in the Tharu community of Nepal
Birta	Land granted by the state to individuals for making a living. Such land was usually inherited and exempted from tax. This system was abolished in 1959.
daku ni kuila	Literally means behind the (British) flag; it refers to the time before land was codified into a western system by colonial administration
Guthi	Land assigned for religious or philanthropic purpose. Guthi lands still exist.
iTaukei	Indigenous Fijians who are the land owners
Jagir	Land granted by the state to civil and military employees in place of salary. This system was abolished in 1951
Jamindar	Landlord
Kipat	Land permitted to be owned by certain indigenous groups, particularly Limbu of eastern Nepal. A Kipat land could not be transferred to individuals outside the community. The Kipat system was abolished in 1964.
Khoriya kheti	Traditional shifting cultivation common among certain indigenous peoples such as Chepang of Nepal
koro	iTaukei village
lewe ni tabenaga	Piece of land given to a woman upon her marriage which her husband and descendants have the right of use and can never be taken back by the givers.
mana	The power to effect
matanivanua	Traditional role that can be defined as the chief's herald; he is the link between the chief and the people of the vanua.
mataqali	Land-owning unit
Raikar	Land whose owner has to pay tax to the government. This land is included in official records, unlike other forms of land tenure such as Birta, Guthi, and Kipat.

Rakam	Land granted as remuneration for performance of specific functions. This system was abolished in 1955.
sevusevu	Traditional ceremonial offering of yaqona roots or yaqona drink to request permission from the host or chief to perform an activity in a place where a person is a guest
soqosoqo vakamarama	iTaukei women's association
tabua	Whales tooth/teeth, the most esteemed item of iTaukei men's wealth
tabua salusalu	Sacred garland made of small carved tabua
talanoa	Casual conversations/discussions
Talukdar	Revenue collector at village level in the hills
tanoa	Wooden bowl in which yaqona drink is mixed
tokatoka	Smallest clan unit
turaga ni koro	Village headman who is a member of the village and paid by the government to look after village matters
turaga iTaukei	Chief
turaga ni mataqali	Chief of the mataqali
turaga ni yavusa	Chief of the yavusa
vakalutu ni qele	Land gifting such as when a woman marries; land is gifted to her and her descendants as part of her dowry but more so to affirm that she and her descendants will continue to be part of the vanua of her birth
vakavanua	Informal arrangements made by landowner and tenant; no documents give security to the arrangement but there is a sharing of resources and goodwill payment to the landowner
Vanua	An ancestral concept that relates to iTaukei's identity; it also means land or space
Vasu	The maternal link
veisorosorovi	Act of traditional reconciliation
veiwekani	Relationships
Vola ni Kawa Bula	iTaukei Register that records the name of each mataqali member and is maintained by iTaukei Land Commission
Vu	Literally means origin or source; it also means ancestral god from whom a tribe begins
yaqona	A crop in many parts of the Pacific, with the scientific name <i>piper methysticum</i> ; in some parts of the Pacific it is known as kava or 'awa. In Fiji it has an important traditional function which includes being offered as an item of reconciliation.
yavusa	Largest clan unit



Synthesis

By Wilfredo V. Alangui

I. Introduction

Tenure rights, in general, refer to social relations and institutions regulating how lands and resources, including forests, are accessed and used (Larson, 2012). It is not just concerned with ownership but with who uses, manages and makes decisions about these resources. It is also about determining in what way and for how long these resources can be used. Questions investigated include what conditions apply and why, and what possibilities are there for transferring or inheriting particular rights.

Tenure rights are viewed, defined, and operationalized in various conditions and contexts. Among indigenous peoples, tenure rights are defined under customary practices and are generally categorized as collective-, kin-, or clan-based, and individual. Tenure rights on lands and forest resources vary, with clear obligations and responsibilities that form part of the practice, and will need to be studied in a diversity of contexts and conditions where these operate.

Customary forest tenure in particular has received interest from researchers and scholars since the inception of REDD+ talks. Their studies on forest tenure primarily used the “bundle of rights” framework* producing parameters for

assessing tenure rights within legal frameworks. A growing number of researchers and policy makers forward the view that recognizing (and to some extent formalizing) customary land rights is a way of addressing insecurity over forest resources.

Rights to lands and forests come with sets of individual and collective prerogatives and regulations at different levels. They are embedded in social relations and socio-political processes at the village level. Socio-cultural norms are drawn from different sources and are largely shaped by issues and concerns of communities. Thus, customary land and forest tenure systems are complex and evolving; they involve multiple rights and level of rights (individual or collective), which are determined by indigenous peoples on a case-to-case basis.

Taking into account the evolving nature of customary practices and diversity of problems, and concerns and situations involving REDD+ implementation, the experiences of other countries show the dynamic links between customary tenure practices at the community level and REDD+ legal mechanisms at the national and global levels.

Case studies conducted in REDD+ pilot areas in Cambodia (Bradley, 2012; Evans, Arpels &

*Rights and Resources Initiative (RRI) has recently developed an “expanded bundle of rights framework” that looks into the following aspects: Access rights, Withdrawal rights, Management rights, Exclusion rights, Alienation rights, and Duration of Extinguishability.

Clements, 2012) and Lao PDR (Moore, Hansel & Johnson, 2012) show evidence of how customary tenure shapes REDD+ implementation where communal titling was explored as an effective means to ensure that villagers have control over the carbon rights to their local forests. Cases from Latin America particularly Ecuador on the other hand show that communal tenure could be a means through which REDD+ incentive projects can be effectively arranged, and delineating land ownership by indigenous peoples is important in strengthening local land and forest governance institutions (Lastarria-Corhiel, Feijoo, Naughton-Treves & Suarez, 2012). This experience shows that customary governance can help in the effective implementation of REDD+ projects in indigenous communities.

II. Research Objectives

The cases mentioned above point to the need to understand better how the practice of customary tenure systems support the successful implementation of REDD+, and in turn how REDD+ can be used by Indigenous peoples in their assertion of their customary tenure rights. Identifying this interplay can help inform policy with regard to indigenous peoples' customary tenure rights and how benefits derived from REDD+ can be ensured.

The general objective of this research was thus to understand the interplay between customary tenure systems and REDD+ in order to ensure benefits of indigenous peoples from REDD+.

The specific objectives were to:

1

Document state laws and policies on land and forest tenure systems in three REDD+ countries and how these enhance or weaken indigenous customary tenure systems.

2

Describe the range of indigenous peoples' customary tenure systems that are practiced by indigenous peoples in their territories.

The specific questions we sought to ask were:

- *What values regulate or govern customary tenure systems?*
- *What are the threats to the practice of customary tenure systems?*
- *What innovations are undergone by indigenous peoples' customary tenure systems?*
- *What types of grievance mechanisms are in place?*

3

Determine the extent of recognition and practice of indigenous women's rights in customary tenure systems.

The specific questions we sought to ask were:

- *What types of rights (e.g., access, use, ownership, decision making) do indigenous women have in relation to customary tenure rights and how are these exercised?*

4

Determine how customary tenure systems facilitate the implementation of REDD+ in the three countries and help secure benefits from REDD+ (carbon and non-carbon).

5

Document how indigenous peoples are using REDD+ to assert, seek recognition, and strengthen their customary land and forest tenure systems.



III. Research Framework

The right to tenure is enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), an international instrument that has been adopted by the three countries involved in this research. As the most comprehensive international instrument recognizing the rights of indigenous peoples, UNDRIP is the overall framework that guided the research.

In the context of indigenous communities, we define customary land and forest tenure as a bundle of rights rooted in indigenous customs and practices and passed on from one generation to another. For customary land tenure, this bundle of rights is “recognized as legitimate by the community where the rules governing the acquisition and transfer of these rights are usually explicitly and generally known, though they mostly are not normally recorded in writing” (Paaga, 2013, p. 264). We argue this holds true as well in the case of customary forest tenure.

For Bruce (1989), forest tenure refers to the set of rights that a person or some private entity holds in land or trees. We expand this definition to include rights of the entire community to the forest, rights that like land tenure are rooted in

indigenous customs and practices and handed down from one generation to the next.

The Food and Agriculture Organization’s categories of land tenure rights (2015) was adopted and modified in this study to include forest tenure rights as shown in the following table. Many of these rights derive from the individual’s membership to a social group such as a clan or family (Paaga, 2013).

For the purposes of this research, formal rights are those customary rights to tenure that are recognized by the State through State laws; informal rights are customary rights not recognized but are practiced by the indigenous communities and ethnic minorities.

Formal and informal rights do not make sense in the context of customary tenure systems—customary rights are inalienable rights of indigenous peoples and ethnic minorities, while the categorization formal and informal rights bestows power to governments to determine which customary rights to recognize formally and which rights to be allowed informally. We include this categorization here because of the reality that indigenous peoples and ethnic minorities have now been subsumed within dominant Western-style forms of government.

Customary Tenure Rights	Land Tenure	Forest Tenure
	Explanation	Explanation
Use rights	Rights to use the land, for instance, for grazing, growing subsistence crops, farming, etc.	Rights to use the forest or parts of it, for instance, for gathering of forest products or selling them, place for worship, traditional rotational farming, etc.
Control rights	Rights to make decisions how the land should be used including deciding what crops should be planted and to benefit financially from the sale of crops, etc.	Rights to make decisions how the forest should be used including which parts are sacred, or designated for traditional rotational farming, who may access, restrict entrance or extraction of forest products (Bruce, 1989), etc.
Transfer rights	Right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights, etc.	Right to reallocate use and control rights, right to sell or mortgage the forest or parts of it, if applicable, etc.
Formal rights	May be regarded as those that are explicitly acknowledged by the State and which may be protected using legal means.	
Informal rights	Those that lack official recognition and protection.	



IV. Research Design and Methodology

The research involved three (3) case studies in Nepal, Vietnam and Fiji, countries that have been engaged with the REDD+ program since 2008 (Nepal) and 2009 (Fiji and Vietnam). Indigenous and ethnic communities involved in this study included those that either have or have no experience with the REDD+ program.

Country researchers were hired by Tebtebba to undertake the research in their respective countries. A lead researcher, acting as research coordinator, helped manage the implementation of the research. The research team consisting of the lead researcher and the country researchers developed and finalized the research design/framework following a Skype conference and several email exchanges. Ms. Helen Valdez, the project management team leader from Tebtebba, provided assistance and advice to the research team during the entire conduct of the research.

The research utilized the following data-gathering methods: review of literature, key informant interview (KII), and focus group discussion (FGD) including collection of other forms of information (e.g., photos, maps, stories and drawings).

The following were the partner indigenous communities and ethnic minorities for the research:

Country visits to Nepal and Vietnam by the lead researcher were also made during the last week of October and first week of November 2017, coinciding with the initial sharing of results with some of the study areas. This allowed him to interact with some of the stakeholders and meet with the research team members in both countries. A 3-day workshop was held in Vietnam in March 2018 to validate initial data and fill in some data gaps. Assisted by professional translators and staff of the Centre for Research and Development in Upland Areas (CERDA), two village leaders, Ha Trung Thong of the Tay ethnic group and Phung Van Kien of the Nung ethnic group from Thai Nguyen province, served as key respondents.

V. Research Findings

This section presents the consolidated findings from the three case studies, organized according to each of the specific objectives. Details of the findings are in the full component reports, which are found in the succeeding chapters of this publication. Important details from the country reports were purposely not included in the consolidated report for brevity; some may not have been captured. For these reasons, the consolidated report is best appreciated and understood if read along with the country reports.

Country	Villages/Communes	Indigenous/Ethnic Minority Groups
Fiji	Emalu, Draubuta and Navitilevu	iTaukei
Nepal	Shaktikhor and Padhampur (Kalika Municipality, Ward No 10, Chitwan District); Patharboji and Dalla (Madhuban Municipality Ward No. 1, Bardiya District)	Tamang, Chepang and Tharu
Vietnam	Binh Long, Phuong Giao, Trang Xa, Dan Tien, and Phu Thuong Communes (Vo NHai District, Thai Nguyen); Cat Van and Thanh Lam communes (Nhu Xuan District, Thanh Hoa)	H'Mong, Dao, Tay, Kinh, Nung, Cao Lan, Tho, Muong, Thai