

Possible implications of REDD on land and forest tenure – exemplified by the Indonesian case

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Abbreviations

AI	Amnesty International
AMAN	Indigenous Peoples' Alliance Indonesia (<i>Aliansi Masyarakat Adat Nusantara</i>)
BAL	Basic Agrarian Law of 1960
BATB	Forest Delineation Process Document (<i>Berita Acara Tata Batas</i>)
BFL	Basic Forestry Law of 1999
BPN	National Land Bureau (<i>Badan Pertanahan National</i>)
CBM	Community based management
CDM	Clean Development Mechanism
CERD	Committee on the Elimination of Racial Discrimination
CFM	Collaborative Forest Management
CIFOR	Center for International Forestry Research
COP	Conference of the Parties
CPR	Common Pool Resources
CSO	Civil Society Organisation
D&D	Deforestation and Forest Degradation
DTE	Down to Earth (Indonesian Non-Governmental Organisation)
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility (World Bank)
FORDA	Forestry Research and Development Agency
FPIC	Free, Prior and Informed Consent
FPP	Forest Peoples Programme
GHG	Green House Gas
GoI	Government of the Republic of Indonesia
GoN	Government of the Kingdom of Norway
ha	hectares
HKm	Community Forests (<i>Hutan Kemasyarakatan</i>)
HTR	Community Forest Plantations (<i>Hutan Tanaman Rakyat</i>)
ICRAF	World Agroforestry Centre
IFCA	Indonesia Forest Climate Alliance
IFPRI	International Food Policy Research Institute
IUCN	International Union for Conservation of Nature
KPH	Forest Management Unit (<i>Kesatuan Pengelolaan Hutan</i>)
JPD	National Joint Programme Document

LULUCF	Land Use, Land Use Change, Forestry
MDG	Millennium Development Goals
MoFor	Ministry of Forestry of the Republic of Indonesia
MRV	Monitoring, Reporting and Verification
NGO	Non-governmental Organisation
NTFP	Non-Timber Forest Product
ODI	Overseas Development Institute
PES	Payments for Environmental Services
PLUP	Participatory Land Use Planning
PMK	Collaborative Management in Protected Areas (<i>Peraturan Menteri Kehutanan</i>)
RaTA	Rapid Land Tenure Assessment
REDD	Reducing Emissions from Deforestation and Degradation
REDDI	REDD in Indonesia
REL	Reference emission levels
RFN	Rainforest Foundation Norway
RoI	Republic of Indonesia
R-PIN	REDD Readiness Plan Idea Note
R-PLAN	REDD Readiness Plan
RUPES	Rewarding Upland Poor for Environmental Services
TAP	Technical Advisory Panel
TFD	The Forest Dialogue
TGHK	Forest Boundary Setting by Consensus (<i>Tata Guna Hutan Kesepakatan</i>)
UND RIP	United Nations Declaration on the Rights of Indigenous Peoples
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNPFII	United Nations Permanent Forum on Indigenous Issues
VER	Verified Emission Reduction
WRI	World Resources Institute

Abstract

Past experiences with (forest) conservation projects and Payments for Environmental Services (PES) have shown that without addressing tenure, efforts are likely to be ineffective. People without or with weak tenure were not involved, conflicts arose and sustainable natural resource management and protection was difficult to achieve. Large-scale projects on forest lands were often conducted at the expense of local communities when tenure was not clear, recognised and secured. The new policy to reduce emissions from deforestation and forest degradation (REDD) will also be implemented in extensive forest areas which will overlap with local communities' territories. Forest-dependent communities often have only weak tenure in the respective countries. To address tenure issues prior to carrying out REDD projects is therefore highly important for REDD's successful implementation and permanence, as well as for the affected communities and their livelihoods. Through literature review, this thesis explores the importance of tenure for REDD and vice versa, first in general terms followed by the Indonesian case study. The analysis of Indonesian REDD proposals and strategy documents with regard to tenure confirms the concerns of civil society that tenure issues are so far not sufficiently dealt with in the REDD process in Indonesia. Past experiences of large-scale projects on forest lands and their impact on land and forest tenure systems in Indonesia give cause for serious concern that REDD in Indonesia (REDDI) might repeat this pattern in that customary tenure is violated and forest-dependent communities are further marginalised.

The conclusion from the general literature review and the case study is that institutional and governance frameworks have to be strengthened and tenure issues must be addressed to increase the chances of successful implementation of REDD projects, their permanence as well as the probability that conditions are improved so as to benefit the poor. If governance and tenure issues are not addressed, the (social) costs that will follow from aggravated conflicts and further deforestation and forest degradation (D&D), with consequential emissions, will be immense. This will have significant impact, not only on climate change but also on poverty alleviation, food security and the attaining of the Millennium Development Goals (MDGs).

1. Introduction

Nowadays climate change is omnipresent in the news and debates. Its impacts are already noticeable in developing countries, in particular for the poor rural population. In international climate conferences high-ranking politicians deliberate with experts and scientists how to keep global warming as low as possible. Many ideas have arisen in such meetings in recent years, one in particular affecting the forestry sector, REDD.

REDD is a mechanism by which reward is offered for reduced emissions from deforestation and forest degradation. It grew popular as these emissions account for about one fifth of those total globally emitted in the land use, land use change and forestry sector (LULUCF). Even though the final shape of REDD schemes is still being negotiated, so called demonstration activities are already implemented in selected countries and are having an effect on forest governance and management practices as well as on millions of forest-dependent communities in the respective countries (FAO (2010a)). They are the ones who suffer the most from D&D and its consequences. At the same time they are vulnerable due to having no or weak land and forest tenure. Despite these huge numbers of affected people, tenure issues have only recently begun to receive attention in international debates – largely due to civil society pressure. So far no country has community-managed forests or indigenous peoples' rights as a binding part of a REDD agreement (COTULA & MAYERS (2009), p. 3).

Much debate about REDD has so far focused on international and technical aspects. But whether REDD will benefit or marginalise forest communities depends on local and national arrangements about the security of tenure and the allocation of benefits *within* countries. Some actors hope for the opportunities which REDD could offer to forest communities. Others are concerned that REDD schemes may result in revenue and resource takeover by powerful elites which will marginalise rather than empower forest people. Which scenario will take place, will differ from country to country and will depend upon whether tenure rights are considered and secured or whether they are ignored and denied. The aim of this thesis is to analyse these possible implications of REDD on land and forest tenure.

Indonesia serves as a case study on the one hand because of its important role in REDD negotiations and its large numbers of demonstration activities (WERTZ-KANOUNNIKOFF & KONGPHAN-APIRAK (2009), p. 16), on the other hand because of its confusing tenure arrangements which have already led to high numbers of land conflicts in past large-scale projects to examine whether it is likely that REDD in Indonesia will follow this pattern or not.

In Part 2, the terms “REDD” and “Tenure” are described. In Part 3, the thesis focuses on the relationship between REDD and tenure, explaining why tenure is important in the REDD context and how REDD might influence tenure arrangements. Part 4 is devoted to tenure issues in the Indonesian REDD context, describing Indonesia’s role in the international negotiations and its tenure systems so as to better understand the following analysis of strategy papers of the Government of the Republic of Indonesia (Gol). In the second half of Part 4, the concerns of civil society regarding tenure issues in REDDI are described in comparison to the statements of Gol to get a more comprehensive insight. Part 5 draws conclusions and gives recommendations for development cooperation.

2. Definition REDD and tenure

2.1 REDD

Reducing emissions from deforestation and forest degradation (REDD) has moved to centre stage in the international climate debate in recent years because carbon emissions primarily from tropical deforestation¹ and forest degradation² account for some 20% of the total anthropogenic greenhouse gas (GHG) emissions in the LULUCF sector (ANGELSEN ET AL. (2008), p. 1). When forests are removed or degraded, emissions are created and carbon sinks are lost. Deforestation reduction was not provided for in the Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC) (COTULA & MAYERS (2009), p. 1). However, recognition grew that the emission reductions needed to avoid dramatic consequences for the global climate are so large that they will not be achieved without reducing D&D (ANGELSEN ET AL. (2008), p. 4).

Starting as RED with a single D for deforestation, the second D for forest degradation was added later. In 2008, the term “REDD Plus” was established, which includes “conservation, sustainable management of forests, and the enhancement of forest carbon stocks”. All references to REDD throughout this document also include REDD plus. REDD’s aim is to create mechanisms to reward those who reduce emissions from D&D (ANGELSEN ET AL. (2008), p. 2). Many difficult questions, such as how to monitor emission reductions and how to ensure that they are permanently and additionally to what would happen without REDD, still must be addressed to turn the idea into an effective and feasible mechanism in practice (ANGELSEN ET AL. (2008), p. 2). For a long time there was a focus on these technical issues. More recently however, concerns over equity and the role of the forest-dependent communities grew. Turning forest carbon into a commodity has a huge potential for inequity.

¹ Deforestation describes a permanent decrease in forest cover.

² Forest degradation describes the quality decrease related to factors like vegetation layer, fauna, and soil, or the loss of carbon stocks on remaining forest land.

Therefore, a scheme to avoid deforestation must not only address the climate benefits, but also ensure that the rights of forest communities are not violated, but rather their livelihoods are improved. (WOLF (2009), p. 1) An important question in this regard is: how will REDD be implemented in countries with unclear tenure systems? How can it be ensured that REDD payments are distributed in an equitable manner and benefit the poor? To respond to all these questions is far beyond the scope of this thesis which focuses on the questions dealing with tenure issues only.³

While it is controversial how to implement REDD, most observers agree that REDD is a key mechanism in global efforts to limit climate change (ANGELSEN ET AL. (2008), p. 1). It has been one of the focal points at recent climate conferences, but so far with few specific results. However, demonstration activities, mainly based on bilateral cooperations on REDD, are being implemented in many rainforest nations at the moment.

2.2 Tenure

Tenure describes the relationship among people with respect to land, forests and other natural resources (WRI (2005), p. 62). This relationship may be defined by written law or by custom. Tenure is an institution, i.e. rules invented by societies to regulate behaviour. The rules of tenure define access to, rights of use, control and transfer of land and other natural resources, as well as associated responsibilities and restraints within societies. (FAO (2009), p. 5) Tenurial rights include, but are not equivalent to ownership. The absence of full ownership over a natural resource does not preclude the possibility of other tenure rights over a natural resource. For example, the State may own the forest but recognise the right of occupants to utilise timber or non-timber resources through permits or leases. Generally speaking, tenure systems determine who may use and extract what natural resources, for how long and under what conditions, who can exclude others from having access to it and who benefits from exploiting it (WRI (2005), p. 62).

Tenure reflects the power structure between and among individuals and social groups in a society. Thus it has enormous political implications and is often politicised. Social stability may depend on whether or not there is a broad consensus on the fairness of the tenure system. Increasing competition for land and other natural resources can lead to tenure conflict when tenure rights are not clear and/or secured. Tenure has a strong role in determining who benefits or loses in the competition for natural resources (SUNDERLIN ET AL. (2008b), p. 3).

³ For further reading about technical aspects of REDD see for example ANGELSEN, A. (2008) and COSTENBADER, J. (2009).

Security of tenure is the certainty that a person's rights to land will be recognised by others and protected in cases of specific challenges (FAO (2002), p. 18). Without secure tenure, people are marginalised and vulnerable to being evicted from their land and excluded from society. Tenure arrangements set incentives either to protect or exploit natural resources (FAO (2009), p. 5). Clear, secure and long-term tenure is therefore important for the responsible use and conservation of resources, as well as for securing livelihoods of the poor (CHRISTY ET AL. (2007), p. 29). Additionally tenure security is often a prerequisite for capital investment by government or businesses; while conversely, conflicts over land and other natural resources discourage investment and undermine sound management (SUNDERLIN ET AL. (2008b), p. 3).

Regarding forests, tenure security is important because it is often the foundation for the social identity, personal security and cultural survival of indigenous peoples. In addition, it is increasingly being recognised that secure tenure of forest resources may contribute to poverty alleviation of the millions of people who depend directly or indirectly on forest resources for their livelihoods and more generally, to sustainable forest management. (SUNDERLIN ET AL. (2008b), p. 3)

Customary tenure systems are determined at the local level and are often based on oral agreements. Statutory tenure systems are applied by governments and are codified in state law. The fundamental differences of customary and statutory tenure systems often lead to contradictions and conflicts about the rights of access and use of natural resources (SUNDERLIN ET AL. (2008b), p. 3). Untitled customary tenure remains the predominant form of tenure in many rural areas in developing countries (WRI (2005), p. 84). However, increasing security of tenure does not always require the gaining of full title or private ownership of land or resources (DEININGER (2003), p. 39).

Official documents issued by the government are not the only ways in which tenure is recognised in rural areas. Evidence of long-term occupation or of observance of customary law are other ways of establishing tenure (WRI (2005), p. 62). In the case of common property resources like state forests, increased tenure security often takes the form of the legally sanctioned use of these resources, including the right to exclude others. Experience shows that where states emphasise the use of formal processes and official documents to acknowledge resource tenure rights, it is likely that poor communities, particularly indigenous peoples, will be disenfranchised (WRI (2005), p. 62).

The main problem with customary arrangements is that they are often not legally recognised and conflicts between communal tenure and formal state-recognised ownership frequently threaten rural livelihoods (WRI (2005), p. 23). Without title or other form of recognition, the majority of rural people in developing countries have no or weak land and resource tenure security (SUNDERLIN ET AL. (2008b), p. 3).

Besides recognition, tenure needs to be supported by policy and institutional systems and relies on governance. Institutional capacity and efforts to effectively sanction violations of rights and to support sustainable resource management are crucial. (COTULA & MAYERS (2009), p. 5)

3. Tenure and REDD

The following chapter describes why and in which regard, tenure is important in the REDD context and how REDD might influence tenure arrangements. Brief conclusions are drawn about what should be considered in the implementation of REDD with regard to the importance of tenure issues and which implications of REDD can possibly be expected due to past experiences with conservation projects.

3.1 Importance of tenure regarding REDD

Clarified and secure tenure rights are not only a question of justice and equity, but also encourage sustainable management of resources. Furthermore, unresolved land claims are likely to result in conflicts which lead to instability and project risks. It is therefore important for the successful implementation of REDD, as well as for the permanent reduction of D&D and REDD's goal to be achieved under equity criteria, to deal with tenure issues first.

3.1.1 Successful implementation

The successful implementation of REDD can be endangered by unresolved claims for land and land conflicts. Land is a resource of limited quantity and the most basic aspect of subsistence for many people around the world (USAID (n.d.), p. 2). Particularly in poor societies where wealth and survival are measured by control of and access to it, land is a strategic socio-economic asset. The nature of land explains why it can easily become a subject of conflict. Population growth and environmental stresses have aggravated conflicts over land. Because land often lacks adequate legal or institutional protection it can easily be captured by the powerful elites at the expense of the poor. An example is the State allocating land under customary rights to investors or for alternative uses (GALUDRA ET AL. (2010), p. 6).

In many land tenure conflicts, the main problem is that parties are not aware of their legal rights or that different legal frameworks regulate access to areas and the use of natural resources in different or opposing ways. A clash between two or more organisations that possess legal authority to regulate the same area of land could also lead to land tenure conflicts. A main source of competing claims is a lack of clarity, legitimacy and legality of land tenure policies. Besides contradictory regulations or overlapping responsibilities, different perceptions and interpretations that people give to their rights resources can lead to land conflicts. (GALUDRA ET AL. (2010), p. 6)

Understanding how land and natural resources are controlled, managed and distributed and how various parties access and use them, is essential for understanding the real cause of conflicts (GALUDRA ET AL. (2010), p. 1). Providing security of tenure is the key in conflict situations to offer long-term perspective and incentives to invest (VAN NOORDWIJKET AL. (2005), p. 109).

How does REDD affect existing tenure conflicts?

There are territorial disputes and claims in many of the countries eligible to participate in REDD (HALL (2008), p. 23). REDD could inflame these debates or instigate new conflicts about resources (ELIASCH (2008), p. 193) as through the implementation of REDD, the value of land and forest will rise and outside investors will be attracted (SAVARESI & MORGERA (2009), p. 18). Land speculations especially carry risks for forest-dependent local communities without official land title or secure tenure through other mechanisms. They are most notably vulnerable to violations of their customary rights in the interest of inward investments, without the right to claim compensation (GRIFFITH & MARTONE (2009), p. 19; ELIASCH (2008), p. 193). The emergence of REDD and its respective financial incentives might cause numerous parties to have powers and "legitimate" claims that affect the land tenure system. Conflicts may arise when these different parties pursue their claims. (GALUDRA ET AL. (2010), p. 8) REDD payments might provide incentives for state and non-state actors to passively ignore or actively deny the land and resource rights of local communities to claim revenues themselves (HUMPHREYS (2008), p. 11).

If REDD schemes are shaped as exclusive conservation models with increased state or corporate control over forests (HALL (2008), p. 23), traditional practices of the local communities, such as slash and burn and shifting cultivation might be restricted (PESKETT & HARKIN (2007), p. 4) or even access to land and resources denied (COSTENBADER (2009), p. 77), so that evictions (SAVARESI & MORGERA (2009), p. 18) and forced resettlements can take place. In this case pressure on resources increases through the expanded conservation areas, which might lead to conflict in the conservation areas as the local population rebels

against the restrictions, revenue capture or relocation. Also, in the areas where local communities are resettled, conflicts might arise because of competing claims for land and resources with people already occupying this area (CONTRERAS-HERMOSILLA & FAY (2005), p. 15). All these risks and potential conflicts are more likely when tenure rights are not clarified and secured. From this it follows, that if claims for land are not clear or conflicts not resolved, REDD risks the exacerbation of existing or new land conflicts between competing stakeholders.

How do conflicts affect the implementation of REDD?

REDD will benefit from reduction and resolution of conflicts because conflict undermines the rule of law, further drives deforestation and increases political risk. Each of these factors is likely to have consequences on the successful implementation of REDD (MoFOR (2008), p. 138).

Land conflicts endanger the successful implementation of REDD mainly in two respects. Firstly, it is not possible to introduce better control over resources unless conflicts can be resolved (SAUNDERS ET AL. (2007), p. 3). Local communities might for example, undermine the aim to reduce emissions from D&D if they are excluded from the conservation and benefit-sharing process of REDD (PESKETT & HARKIN (2007), p. 3) because they fear that their livelihoods will worsen through restrictions or even evictions. In particular, if they depend totally on forest resources for their livelihoods and have no income alternatives, they will try to exploit the resources as fast as possible despite the restrictions due to the risk of losing all access (GALUDRA ET AL. (2010), p. 6).

Secondly, conflicts might lead to a lack of investment in REDD and carbon markets as investors face high investment risks when land claims are not clarified and conflicts result (SAVARESI & MORGERA (2009), p. 15), especially if the respective conflicts are violent. The delivering of REDD commitments with unresolved tenure issues or local hostility is at risk. Especially with a lack of legal protection against such non-delivery, this could lead to fewer investments. Furthermore, some investors will fear reputational risks in relation to possible tensions with local groups (COTULA & MAYERS (2009), p. 3). These risks play an important role in investor decisions about transactions and might limit private sector involvement in REDD. Carbon investments are more likely to take place in countries where land and forest tenure has been clarified and therefore investment risks are lower (SAVARESI & MORGERA (2009), p. 18). Both the lack of investment and the potential of ongoing exploitation, including the risk of retaliation brought up by unresolved land claims endangers the successful implementation of REDD.

From the implications of REDD on land conflicts and vice versa, it follows that land and forest tenure arrangements from all stakeholders, concessions and mining rights must be identified and conflicts resolved before a REDD project can start, both to ensure compliance with the rights of existing forest users to avoid conflicts and to successfully protect the resources to implement REDD projects (SAVARESI & MORGERA (2009), p. 30). Defined land and forest rights are admitted to be a crucial indicator for "REDD readiness" and therefore are important for long-term investments and the sustainable implementation of REDD (SAVARESI & MORGERA (2009), p. 18). It is important not only to solve conflicts prior to implementation of REDD but also to shape REDD in a way that it does not lead to new conflicts.

In this context REDD implementers can benefit from lessons learned in conflict resolution and conflict avoidance, for example through the application of Participatory Land Use Planning (PLUP) and Rapid Land Tenure Assessment (RaTA).

Participatory Land Use Planning (PLUP)

Participatory land use planning (PLUP) is an effective tool for preventing and solving land conflicts. It is a key instrument in reconciling competing interests in land between different users. (WEHRMANN (2010), p. 105)

If all relevant stakeholders are involved in joint land use planning, conflicts can be prevented. In the case of existing conflicts, discussions about current and future land uses and the joint definition of land use rules can help to reduce or even stop conflicts. This can be done through the preparation of land use maps and plans as well as by local agreements, both consisting of or being accompanied by land use regulations. Experience shows that land and other resource conflicts can be significantly reduced by these local agreements which establish transparency of land use, strengthen consensual approaches within the community, support a sense of responsibility, introduce penalties and rely on social control. (WEHRMANN (2010), p. 106)

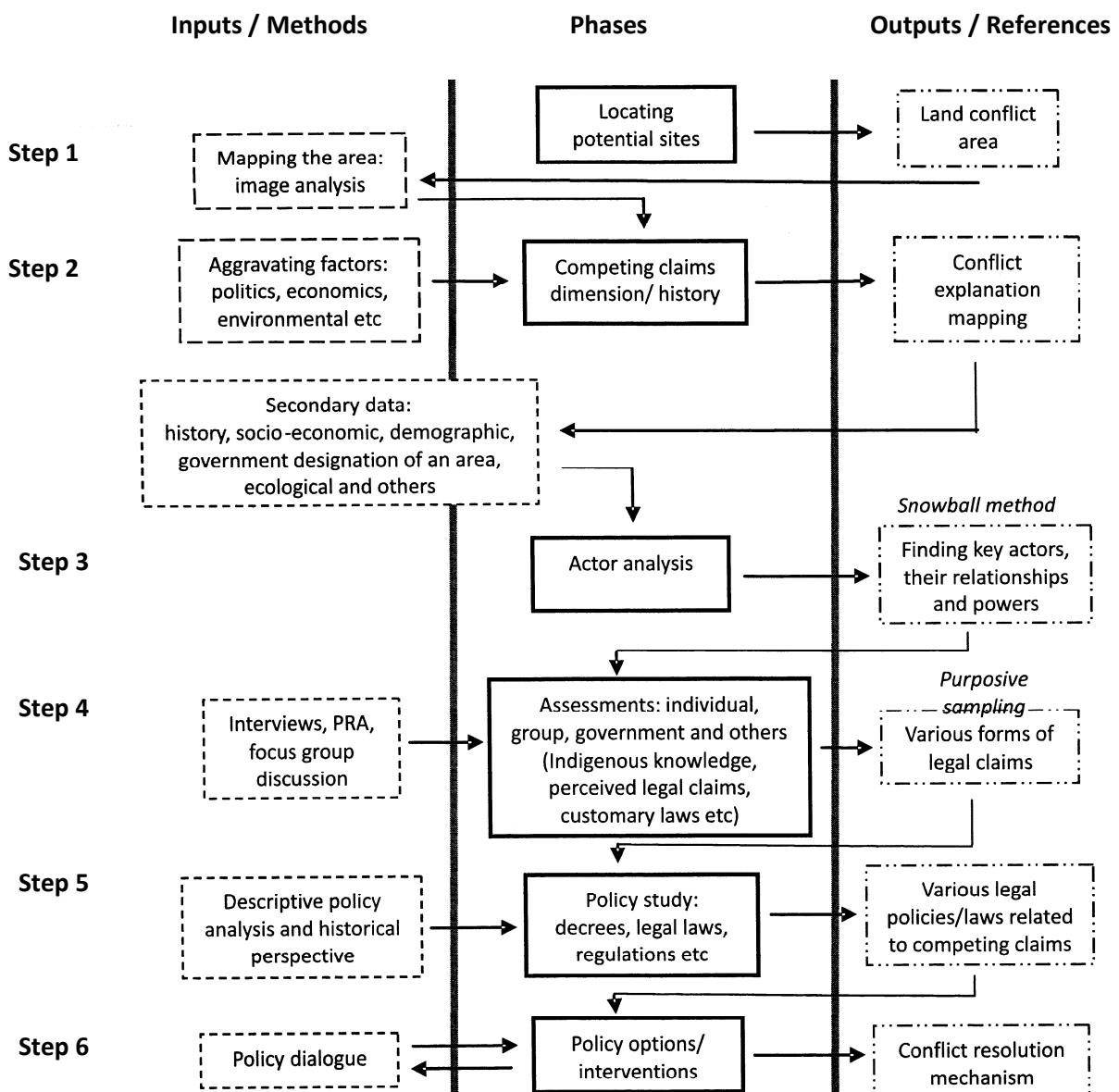
However, power asymmetry involved in conflicts can make such agreements inoperative and demonstrate that there can be limits to the effectiveness of local agreements. To solve asymmetric conflicts, it is important that the State itself is not one of the conflicting parties and acts within principles of good governance, enforces laws and has an interest to solve the conflicts. In this case the State can serve as the superior authority to intervene.

A major challenge is to convince all parties to join the land use planning process to prevent or solve land conflicts, including the powerful stakeholders. (WEHRMANN (2010), p. 107)

RaTA-Concept

The Rapid Land Tenure Assessment (RaTA) also explores competing claims among different parties, who hold different rights and powers. This approach is however, more complex than the more practically applied PLUP. RaTA analyses the competing claims on a historical basis, including an extensive policy study because claims are often related to competing or changing land tenure policies, developed in different historical periods and for various purposes. The aim is that RaTA can provide policy options to settle the land conflicts. (GALUDRA ET AL. (2010), p. 11) RaTA is conducted in six steps (see Figure 1):

Figure 1: The steps in RaTA analysis



1) Locating and Mapping Potential Sites

The first step is to establish whether the area under consideration (for example for REDD activities) is subject to ongoing disputes or whether there is potential for conflict. Using spatial analysis and participatory mapping competing land uses and the resource uses at stake can be determined. (GALUDRA ET AL. (2010), p. 13)

2) Competing Claims Dimension

The dimensions of stakes for competing claims and the relative importance that each party gives to the stake need to be assessed as well as the relationship between conflicting parties. To get an overall insight of the aggravating factors of the competing claims in the past and being able to understand recent conflicts, the method recommends the assessment of the duration, frequency and the resolution process of claims in the past. (GALUDRA ET AL. (2010), p. 15)

3) Actor Analysis

The actor analysis in RaTA aims to explain factors that lead different stakeholders to become involved in competing claims. The analysis is conducted via secondary data to identify key actors, their relationship and powers. (GALUDRA ET AL. (2010), p. 16)

4) Assessment

When the actor analysis is completed, their perspectives regarding competing claims on natural resources have to be determined. This is achieved by interviews and discussions with all relevant stakeholders about their legal and perceived claims. This assessment is based on the argument that competing land claims have occurred because many actors have different perceptions of 'legal' land rights and vastly different understandings of land policies. The next step of the assessment is to determine the influential parties in forming policies that address local land tenure system. (GALUDRA ET AL. (2010), p. 18)

5) Policy Study

Conflicting claims commonly emerge over time because of contradictions, gaps and uncertainties in a country's land law, policies and regimes. Policies need to be studied in a historical perspective to analyse the roles of these policies in the land conflicts and competing claims. (GALUDRA ET AL. (2010), p. 18)

6) Policy Options

The last step of RaTA is to determine which of the various alternative policies and interventions will best settle the competing claims. Through policy dialogue a conflict resolution mechanism is to be found. Appropriate legislative and policy reform is often required to prevent continued land claim disputes. Competing claims that involve conflicting legal rights might require court proceedings to be resolved effectively. In some cases, specialised land courts have proven helpful in dispute resolution. In other cases, alternative

dispute resolution processes, especially mediation and arbitration or customary and community-based mechanisms for conflict resolution may be relevant. Increasing and protecting tenure security is the best way to resolve the competing claims. (GALUDRA ET AL. (2010), p. 20)

The tools of Participatory Land Use Planning or Rapid Tenure Assessment already applied in the design phase of REDD could help to reduce the risk of inflaming existing conflicts or of generating new conflicts through REDD and could improve the implementation conditions (PESKETT & HARKIN (2007), p. 3).

3.1.2 Permanence

The aim of REDD is to reduce emissions from D&D on a permanent basis. Standing forests are to be protected to sequester the carbon therein. To attain permanence in REDD, forests have to be managed sustainably and controlled effectively. How can this be achieved? What preconditions must a management system provide to achieve sustainability and effective control?

Most forests in the potential “REDD countries” are under state control (see Annex 1) (BROWN ET AL. (2008), p. 115). Experience has shown that state forests are neither managed sustainably nor controlled effectively when governance structures and institutions are weak, management capacities and adequate budget are lacking and national legislation provides unclear tenure status (WHITE & MARTIN (2002), p. 3). In this context, governments are often exploiting forest resources in their short-term interest for revenues rather than conserving them or supporting sustainable forest management over the long-term (BARR ET AL. (2006), p. 9). In countries where central governments have excluded sub-national authorities and local communities from sharing these revenues (BARR ET AL. (2006), p. 9), local communities also tend to be interested in their individual short-term gains (ANSHARI & ARMIYARSIH (2005), p. 119). They use forests as sources of cash income, particularly where their access to forest resources is not guaranteed over the long-term because of insecure tenure (BARR ET AL. (2006), p. 9).

In some forest areas the presence of the State is so weak or even absent that the operative tenure rules are those of the local communities, even when the State is the *de jure* owner. These *de facto* tenure rules are not legally protected and if challenged they would not be given recognition in courts of law and therefore are less secure than *de jure* rights. Under these conditions of insecure tenure status, the local communities have no effective control over the forest resources (CHRISTY ET AL. (2007), p. 30). In other cases, strong state

interventions may disrupt traditional forest management institutions without providing an effective alternative, so that open access prevails. Neither the State nor the traditional system is effectively in control, all potential users have equal access to the resource and none can be excluded (CHRISTY ET AL. (2007), p. 30). This situation provides opportunities for outsiders to exploit forest resources (ANSHARI & ARMIYARSIH (2005), p. 119). Open access leads to encroachment, overexploitation of forest resources and high rates of illegal logging. For successful community-based forest management, tenurial security is needed so that a community itself is able to exclude outsiders from using the resource and to enforce norms of behaviour - such as deforesting limits - for its own members' resource use (OSTROM ET AL. (1999), p. 278). Secure tenure and resource access rights are crucial to the success of community conservation initiatives.

Several countries have undertaken reforms which increased local control over forestlands through devolving management and use rights to local governments and communities (SAVARESI & MORGERA (2009), p. 21). The local communities' ability to manage and control forest resources is now widely recognised (WHITE & MARTIN (2002), p. 2). As a result and despite the continuing central role of the State, the share of forestlands under local control is increasing (COTULA & MAYERS (2009), p. 10). According to work carried out by Forest Trends, 22% of forests in developing countries were managed by communities in 2000 (WHITE & MARTIN (2002), p. 7) with further increasing rates until 2008 (SUNDERLIN ET AL. (2008b)).

Even though increasing areas are managed under community forestry schemes, current forest laws still provide little scope for local people to play a significant role in the planning, management and allocation of forest resources (ROMANO & REEB (2006), p. 1). Often the communities still lack tenure security. Many governments continue to maintain sovereignty and management control over forested areas (MOLNAR ET AL. (2004), p. 42). In some cases, tenure has been transferred or recognised, but with so many restrictions on access and use that these areas remain effectively under state or local government control (MOLNAR ET AL. (2004), p. 42). In other cases, customary rights are not officially recognised or subordinated to national interest so that local communities *de facto* have no or weak tenure rights. Realising the potential of community-based forest management and avoiding further forest degradation will require removing existing legal, policy and implementation barriers. There must be clearer legal protection and enforcement (WHITE & MARTIN (2002), p. 19). With a lack of clear and secure legal rights sustainable forest management in the long-term will not succeed (STERN (2006), p. 26).

Examples from all over the world show that community forest management is a long-term solution in safeguarding and ensuring sustainability when they have secure and enforced

rights and are able to exclude others (GRIFFITH & MARTONE (2009), p. 21). Community forestry management, where successfully applied, has reduced deforestation significantly and furthermore opened up alternative income streams for communities thus contributing to poverty alleviation (ELIASCH (2008), p. 56). Secure tenure is a prerequisite, which has positive economic implications as it reduces uncertainty and generates incentives to improve forest resources management by increasing the likelihood that rural populations will be able to gain the returns of their labour and time (CONTRERAS-HERMOSILLA & FAY (2005), p. 2).

Insecurity over the allocation of forest resources undermines sound forest management, as without secure rights, forest users have few incentives - and often lack legal status - to invest in protecting forests (SAVARESI & MORGERA (2009), p. 16). Without security of tenure, people will tend to prefer immediate benefits instead of greater returns in the long-term (FAO (2006a), p. 9). Forests however need medium- to long-term investment to produce sustainable returns. To invest in forestry, people need the security that comes with clearly defined rights and tenure, including clear access and control, to use the resources (FAO (2006a), p. 9). Tenure security is thus a key strategic element to enable sustainable forest management and resource protection. Secure tenure together with clear responsibilities, accountability and effective control are important for REDD's permanence, as well as for local communities' livelihoods (CONTRERAS-HERMOSILLA & FAY (2005), p. 2). In addition to granting secure tenure rights, governments must effectively enforce and protect these rights. Local communities must have legal recourse in case their tenure rights are violated. Tenure rights amount to very little if property cannot be secured from outside abuse. If formal rights are not supported by adequate enforcement and participative mechanisms, they may not have a significant impact on deforestation (MORGERA (2009), p. 42). The extent of recognition of customary rights and the means of enforcement of these rights will thus have significant effects on permanence (DOYLE (2009), p. 92).

Deforestation is highly complex as it is driven by a number of direct and indirect factors that stretch beyond the forestry sector (see Annex 2) (MYERS (2007), p. 68; GEIST & LAMBIN (2001), p. 15). It is clear to many, however, that insecure forest tenure is a key factor in deforestation and forest degradation in many of the world's forests (ELIASCH (2008), p. 35). The underlying causes need to be fully understood if deforestation is to be effectively addressed (GEIST & LAMBIN (2001)). Previous projects in the forestry sector have shown that investing in forest conservation projects without understanding and addressing the drivers of deforestation can result in wasted resources with no impact on deforestation rates (MYERS (2007), p. 68). Governments should examine their laws and policies with a view to identifying any internal drivers of D&D (COSTENBADER (2009), p. 6). In many tropical countries, legal protection of land title is for example, conditional on the ascertainment of "productive use"

requirements that create perverse incentives to foster deforestation as forest clearance strengthens land claims (GEIST & LAMBIN (2001), p. 13). As a result, locals set fire to forest lands, plant crops and then claim it as a private property. This strategy can be seen everywhere in the tropics, especially when land tenure is not clearly defined, local institutions are weak and customary laws are not enforced (ANSHARI & ARMIYARSHI (2005), p. 119). Provisions that require forest clearing should be eliminated through tenure reforms that allow different mechanisms to claim land and use rights to delink secure tenure from deforestation and therewith ensure permanence (COSTENBADER (2009), p. 6). Drivers of deforestation have to be countered on different levels, one of them being governance reforms with transparent allocation of concessions, anti-corruption commissions and law enforcement. The governance reform should also include tenure reforms. Secure tenure can be seen as the first preliminary step to reduce deforestation (SAVARESI & MORGERA (2009), p. 34). There is increasing recognition that security of tenure is one of the most important mechanisms to ensure accountability and control (ROMANO & REEB (2006), p. 1), which are also essential elements for the success of REDD.

Experience has shown that effective management of natural resources should consider land tenure early in the design phase. Without understanding local tenure arrangements, programmes based on natural resources are likely to be ineffective and to encounter major problems, causing conflicts in the future. (GALUDRA ET AL. (2010), p. 2) It is therefore important that REDD schemes are tailored for country-specific conditions and that existing tenure systems are understood prior to implementation (BOND ET AL. (2009), p. 32).

Clear and secure forest and land rights together with the assignment of stewards capable of controlling and managing forests are an essential pre-condition to ensure the long-term permanence of forests and of the carbon sequestered therein (SAVARESI & MORGERA (2009), p. 18). These lessons learned from sustainable and effective forest management have to be considered to make REDD work. Local communities' involvement in protecting forests should be strengthened to control the exploitation of forest resources (STERN (2006), p. 26). IUCN also observes that REDD can only help to avoid climate change, "if it is based on sustainable forest management". They further state that "weak forest governance and the marginalisation of forest dependent communities are important factors that exacerbate D&D. As long as these challenges remain unresolved, the success of REDD is uncertain and REDD mechanisms might even inadvertently reinforce corruption, undermine human rights and threaten forest biodiversity" (IUCN (2008), p. 2). Several recent reviews from governments and non-governmental organisations (NGOs) have also confirmed that without recognising

the rights of forest-dependent people, REDD will not succeed (GRIFFITH & MARTONE (2009), p. 19). With clear ownership and rights of use and their effective enforcement, permanence is more likely to occur (COSTENBADER (2009), p. 5).

3.1.3 Equity

The aim is to implement REDD under the “three e” criteria (effectiveness, efficiency and equity). Effectiveness defines the capability of REDD to reduce GHGs, efficiency defines the extent of REDD to achieve this goal at minimum cost. Equity in this context is understood to mean the extent to which REDD achieves a fair distribution of cost and benefits. (ANGELSEN ET AL. (2008), p. 2) Most important for this thesis is to examine the equity issue because tenure systems reflect equity in regard to own, control, use and access land and other natural resources. However inequalities always have strong implications on effectiveness and efficiency as well.

In most societies, access to land has favoured certain individuals and groups at the expense of others. Inadequate rights of access to land and other natural resources and insecure tenure of those rights, often result in extreme poverty and hunger. (GALUDRA ET AL. (2010), p. 2) REDD projects should therefore ensure that conditions, which prevent people from enjoying their rights, are eliminated or reduced. Essentially, there is a need to study tenure as a means to provide tenure security which is a precondition for improving livelihood conditions (GALUDRA ET AL. (2010), p. 2).

The concept of REDD is based on the idea of setting incentives by rewarding reduced rates of emissions. Consequentially these incentives have to be offered to those stakeholders who manage and use the resources and who thereby affect the amount of emissions. But who is rewarded for reduced deforestation and carbon sequestration when land and carbon rights are not clear? (PESKETT & HARKIN (2007), p. 3) How can it be ensured that the one rewarded is the one who protected and managed the resources and that the incentives were provided correctly?

Clarifying tenure rights and linking carbon rights to land tenure is important to ensure that the rewards accrue to the true forest stewards or guardians (PESKETT & HARKIN (2007), p. 5). Tenure defines who will participate in and who will benefit from REDD (GALUDRA ET AL. (2010), p. 1) and is therefore key if REDD is to benefit the poor and thereby alleviate poverty or conversely, if it is implemented at the expense of the poor and further marginalises them (COTULA & MAYER (2009), p. 3). Where poor people have weak powers to assert their rights

to land or where they do not have land rights, they may be particularly disadvantaged in negotiating benefits, as they are often less able to assert their claims compared to more powerful elites (PESKETT & HARKIN (2007), p. 3).

There are different scenarios if tenure rights are not given attention in REDD.

The first scenario is that contracts and benefits will go to relatively few and large forest owners with formal land title, causing increasing inequality, resentment and conflict (SUNDERLIN ET AL. (2008a)). This will reduce the effectiveness and the efficiency of REDD and will not alleviate poverty but further increase inequality. When the true forest conservers do not have a stake and feel a lack of legitimacy of the revenue distribution, they may sabotage REDD projects as they might fear that the projects' continuance could further worsen the conditions of their livelihoods (SAVARESI & MORGERA (2009), p. 18).

The second scenario is that governments will resort to renewed and increased state control to compensate for low area coverage, which will lead to exclusionary models of forest conservation (SUNDERLIN ET AL. (2008a)). Forest communities could lose their access to the forests on which they depend for their livelihoods or even be evicted. This scenario could result in increased violation of tenure and could also lead to retaliation which further reduces effectiveness and efficiency.

As already mentioned, most of the forests eligible for REDD are under state control (see Annex 1) and have high deforestation rates (KAROUSAKIS & CORFEE-MORLOT (2007), p. 36). Most likely, those who have formal land rights will benefit from REDD revenue even though, in the case of state forests, the *de jure* owner of the forest resources does not necessarily have to be the true conserver. Communities managing the resources often lack secure tenure and cannot prove that they have a stake in maintaining and protecting resources and reduced emissions. As long as community rights are not recognised and their tenure rights are neither secured nor enforced, there is risk of "moral hazard" where deforesters instead of forest conservers are rewarded. Private landowners and governments are likely to receive revenues because of their official title, whilst the local forest communities, especially indigenous peoples, who were the main conservationists for decades, will go away empty-handed. In the absence of secure land rights, indigenous peoples and other forest-dependent people have no guarantees that they will receive any form of REDD reward for their extensive forest conservation efforts. (HALL (2008), p. 23) This "moral hazard" could lead to cynicism and a lack of identification with national forest conservation strategies and increasing D&D rates which further undermines effectiveness and efficiency (SUNDERLIN ET AL. (2008a)).

Huge financial efforts have to be raised to implement and control REDD activities under these circumstances, as large command-and-control systems to keep forests standing, have to be funded. That is why advocates of community-based REDD schemes stress that supporting secure tenure measures and providing help to equip communities to protect their forests would be a much more effective, just and cheaper option (HATCHER (2009), p. 11).

Indigenous peoples, forest movements and forest policy experts also warn that without preconditions such as respect for the principle of free, prior and informed consent (FPIC) and requirements for progressive forest sector tenure and governance reforms, REDD incentives and methodologies will suffer serious moral hazards, risk marginalising forest-dependent communities and fail to tackle the underlying causes of deforestation. (GRIFFITH & MARTONE (2009), p. 1) The Overseas Development Institute (ODI) advocates that a “pro-poor REDD” (PESKETT ET AL. (2008), p. 54) must be established which, clearly defines and enforces land and carbon rights and distributes REDD funds equitably.

Regarding equity and benefit-sharing issues, REDD implementers can learn from the experience of payment schemes for environmental services (PES) where those that provide ecosystem services by foregoing alternative uses of the land should be compensated by the beneficiaries of that service. PES schemes have shown that payments serve as an incentive, however they are unlikely to be effective under conditions of weak governance. In many areas where D&D are at their highest, governance is weak and is an underlying cause of D&D (BOND ET AL. (2009), p. 32). Under these circumstances the implementer has to strengthen tenure to guard against elite capture. (COTULA & MAYERS (2009), p. 6) Especially in cases of illegal logging in public and/or quasi open access forests, PES approaches alone will not be viable. Additional investments in policies and measures to improve the governance of forests will be necessary. Effective and equitable overall national and forest governance frameworks and systems, such as clarity over land and resource rights are needed. A robust legal and institutional framework, as well as legal certainty and the rule of law are essential to ensure fair remuneration from the international level to local land users for ecosystem services (BOND ET AL. (2009), p. 24). If it cannot be ensured that REDD interventions stimulate the resolution of key governance and other enabling conditions, these challenges need to be resolved first before any investment in REDD activities makes sense (BOND ET AL. (2009), p. 15).

The World Resources Institute (WRI) demonstrates that participation in PES schemes is easier for large landholders than it is for small landowners and the poor. Barriers to participation in PES schemes include lack of tenure, restrictions on land uses, for example for traditional forest uses, high transaction costs and lack of credit for start-up funds. Secure

tenure is key to benefit from PES programmes as it is almost always used to identify who should rightfully receive payments. That leaves those without secure tenure - particularly the landless - unable to benefit unless some special provision is made, or unless benefits are distributed to larger community associations that can then attempt an equitable distribution. (WRI (2005), p. 108) Experience with PES schemes suggests that holding formal title emerged as a key discriminating factor for access to revenues (COTULA & MAYERS (2009), p. 20). The same is likely to apply for REDD projects.

The possibility of bundling smaller land parcels and conducting “collective contracting” may help to reduce transaction costs (KAROUSAKIS & CORFEE-MORLOT (2007), p. 35). Research from past PES projects shows that even small payments can represent a helpful extra income source to local communities. However, the higher the start-up or the opportunity costs of preserving forest, the greater payments must be in order to affect local behaviour and decision-making. (COSTENBADER (2009), p. 75)

Lessons from past and ongoing PES projects largely support direct payments to the people responsible for providing the ecosystem services, generally the local and indigenous communities living in or around forests that protect and maintain them (COSTENBADER (2009), p. 69). This would provide an incentive to individual forest owner or users to make informed decisions on the land use choices (KAROUSAKIS & CORFEE-MORLOT (2007), p. 35). Increasing examples of conservancies opt to allocate a portion of revenue directly to members (BOND ET AL. (2009), p. 9). The level at which emission reduction incentives may be devolved however will depend crucially on the monitoring abilities of a particular country. If there is accurate monitoring at the local level, then payments could be made directly to these individuals or communities (KAROUSAKIS & CORFEE-MORLOT (2007), p. 35).

Cash income is only one form of payment. Alternative payment forms, such as conditional land tenure, can also be effective (e.g. Sumberjaya see Annex 4) (BOND ET AL. (2009), p. 9). Conditional land rights as rewards for the protection and maintenance of environmental services can provide an opportunity to solve the challenges of unclear tenure and inadequate funding for benefits simultaneously. Access to or use of non-timber forest products (NTFPs) presents another type of benefit (COSTENBADER (2009), p. 70).

3.1.4 Requirements for tenure security

The prior descriptions have shown that security of tenure is essential for the successful implementation and permanence of REDD, as well as for the investors and the affected communities. Providing security of tenure rights involves different aspects, such as clarity as to what the rights are and clear allocation of authority, responsibilities and duties. Confusion

can significantly undermine the effectiveness with which those rights are exercised and lead to conflict (CHRISTY ET AL. (2007), p. 100). Examples are the recognition of customary rights in national legislation that might be vaguely formulated and therefore easily re-interpreted (COLCHESTER ET AL. (2006b), p. 14) or the lack of clear allocation of responsibilities and duties in decentralised forest management systems, both leading to different perceptions and application of rights and to uncertainty (GREGERSEN ET AL. (2004), p. 53).

To provide tenure security, rights should endure either in perpetuity or for a period clearly defined and at least as long as is realistically required to reap the benefits of participation (DEININGER (2003), p. 26). Additionally, rights need to be exclusive so that the holders are able to exclude or control the access of outsiders to the resource (ROMANO & REEB (2006), p. 6). A requirement for exclusivity is that there must be certainty, both about the boundaries of the resources and about who is entitled to claim membership in the group (OSTROM (1990), p. 90).

To ensure security of tenure rights, the legal system has to recognise those rights and the rights holder (FAO (2002), p. 19). Besides recognition, rights need to be enforced and protected by the State (MEINZEN-DICK & DI GREGORIO (2004), p. 1). Right holders need to have access to mechanisms and institutions to seek protection of their rights and to solve disputes. This access has to be fair and at low cost. One of the most important aspects for providing tenure security however is the clarity that rights cannot be taken away or changed unilaterally or unfairly. Limitations on tenure rights, such as the legal provision that customary rights have to give way to national interest, for example undermine the sense of tenure security (COLCHESTER (2008), p. 12). In case of violated tenure rights and expropriation, compensation needs to be guaranteed (CHRISTY ET AL. (2007), p. 100).

Whether these conditions for tenure security will be provided for in the potential “REDD countries” depends on existing national arrangements or reforms and will differ from country to country. A closer insight of the tenure arrangements of Indonesia is given in 4.1.

3.2 Importance of REDD regarding tenure

As tenure is key to who will be made responsible for reducing emissions from D&D and who will benefit from the revenues, who will be able to participate and who will be left out, REDD will definitely influence tenure issues in implementation areas. The question is whether REDD will serve as an impetus to clarify and secure tenure rights or whether it will lead to violations of insecure customary rights and thereby aggravate the tenure situation and hence livelihoods of local communities in the respective countries.

When the importance of secure tenure for the successful implementation, permanence and equity issues discussed earlier are understood and are taken seriously, there is the chance that REDD will lead to clarified and more secure tenure rights through tenure reforms. If the State does not recognise the importance of tenure security for tackling D&D, particularly considering the pressure of time and various technical implementation problems of REDD, no clarification of rights or reforms will take place. Customary rights might be either passively ignored or actively denied and REDD revenues might flow to title holders and/or the State only instead of to all stakeholders which are involved in forest management and protection. These two scenarios are briefly described as follows.

3.2.1 Risks

Increasing value of land and forest through REDD schemes might lessen the probability that tenure reforms in favour of local communities with weak or no tenure are conducted (BROWN ET AL. (2008), p. 115) or that conflicts are resolved in local communities' favour (GRIFFITH & MARTONE (2009), p. 23). On the contrary, conflicts are likely to increase through rising resource value which might attract outside investors that are interested in large-scale land and forest areas (SAVARESI & MORGERA (2009), p. 18). The phenomenon of large-scale acquisitions of land by private investors or foreign governments, so called "land grabs"⁴ due to rising food and energy prices, is already known in many developing countries. Especially in countries where governance and institutions are weak and the local people have no secure tenure, numbers of "land grabs" increased dramatically. This phenomenon could be accelerated through REDD in forested areas affecting in particular forest-dependent people without or only weak tenure rights.

Even without the involvement of outside investors, REDD policies will trigger a rapid expansion in lands set aside for REDD projects (HALL (2008), p. 6). Without clear and secure tenure, indigenous and other forest-dependent communities have weak bargaining power in negotiations about REDD implementation and their involvement (SUNDERLIN ET AL. (2008b), p. 29). Besides having no voice in deciding what will happen to their territories in the REDD context, they further lack any guarantee that benefits will be shared with them (HALL (2008), p. 16). Through increasing land values, the probability that natural resources are wrested away from local communities without secure tenure are very high (HALL (2008), p. 7). To reap the REDD revenues, the State might deny customary rights and only acknowledge statutory rights (HUMPHREYS (2008), p. 11).

⁴ For further reading about "land grabbing" see for example KUGELMAN & LEVENSTEIN (ed) (2009).

When REDD projects are shaped as exclusive conservation schemes, forest-dependent people could be restricted in their access and use of forest resources on which they depend for their livelihoods. If the worst comes to the worst, forests might be protected by force and the local population might be totally denied access to forest resources (SAVARESI & MORGERA (2009), p. 18) or even displaced from traditional territories (MORGERA (2009), p. 42). This would have detrimental impacts on the livelihoods of the local population. Especially because REDD areas come additionally to plantation and mining projects. Up to 1.6 billion people are at least partially reliant on access to forests for their livelihoods (FAO (2010a). Treating forest carbon as a commodity is therefore inherently inequitable, since it discriminates against people who previously had free access to the forest resources they depend on, but cannot afford to buy forest products or alternatives (WOLF (2009), p. 24). REDD would change local power structures and would lead to shifts in social and traditional values and behaviours (COAD ET AL. (2007), p. 3). Forest-dependent communities would be further marginalised, which might result in conflict, retaliation, sabotage and uncertainty. These factors endanger resource protection and the success of REDD projects in the long-term. Any REDD projects that deny local communities and indigenous peoples' access to forests, risk having grave impacts on poverty and the achievement of the Millennium Development Goals (HALL (2008), p. 6).

3.2.2 Opportunities

REDD payments could provide incentives to reforest degraded land and to conserve the remaining forests if it makes it equally profitable to plantations or mining activities. This could provide opportunities for local-dependent people, including indigenous peoples if they are acknowledged to be good forest conservers and that their involvement and knowledge is needed to reduce emissions from D&D in the long-term. In this case their stake in control and management of forest resources would increase and they would be enabled to participate in and benefit from REDD activities.

If the importance of secure tenure for the long-term success of REDD is understood, REDD might encourage the resolution of land and forest tenure issues in order to benefit from its impact on resource protection and reduced emissions. In this case REDD could lead to tenure reform with legal recognition of customary rights and their empowerment in practice or to comprehensive registration and land titling processes, depending on the local context (SAVARESI & MORGERA (2009), p. 18). REDD payments could be used to conduct these reforms and to invest in the expansion of communities' involvement in forest management and control. Strengthening community-based management (CBM) through increased tenure

security would enable sustainable forest management and more effective control of the resources, together with improved livelihoods for the local communities. To create an enabling environment for the successful implementation of REDD, governments could be interested to address competing land claims and land conflicts to find mechanisms to solve them. The clarification and securing of tenure would be an important step towards good forest governance. Under these conditions REDD could provide significant co-benefits in addition to the climate mitigation benefits (WOLF (2009), p. 24). Tenure security would have positive impact on local communities, investors, resource management and also on political stability through improved livelihoods and poverty alleviation.

3.2.3 Outlook

Which scenario will take place will depend on the political will of the respective governments and on requirements imposed by the funding organisations and the bargaining power of the local communities, the civil society and NGOs. As this is not predictable, only trends can be estimated from earlier experiences with tenure issues in the context of the establishment of large-scale conservation areas.

The conventional approach to protecting natural resources, ecosystem services and biodiversity has been to establish public protected areas where human access is restricted or prohibited (SUNDERLIN (2008b), p. 20). The main problem is that protected areas tend to overlap with territories of indigenous peoples and other local communities that depend on the resources for their livelihoods (MOLNAR ET AL. (2004), p. 6). More than one billion people live in the world's 25 "biodiversity hotspots." (SUNDERLIN ET AL. (2008b), p. 20). Currently more than ten per cent of the world's forest area is under public protection.

The exclusion from forest areas has had negative effects on the livelihoods, wellbeing, health and culture of the millions of people depending on these resources. There have been widespread human rights abuses related to government enforcement of forest protection laws. It is estimated that globally there are 130 million conservation refugees (ALCORN & ROYO (2007), p. 122).

Besides these detrimental impacts on local communities, the lack of their involvement has also had negative effects on the conservation of the resources. It is therefore increasingly recognised that one of the solutions to the failings of the conventional forest protection approach is to place more trust in the resource management practices of people who have long lived in the forest and to undertake a rights-based approach. Community-based management and conservation of natural resources has been increasing in recent decades with the recognition of indigenous and other communities' land rights (MOLNAR ET AL. (2004), p. 10). It would be encouraging if this trend is further continued with the implementation of

REDD. However in the majority of cases so far, forest communities were not involved in the conservation schemes but suffered from restrictions or displacements. If REDD follows these patterns, it is likely that the risks will outweigh the opportunities for local communities and their tenure systems.

As it is difficult to assess those scenarios in general, the following chapter will consider how REDD in Indonesia may affect land and forest tenure. This will be done by a preliminary description of the role of Indonesia in REDD negotiations and demonstration activities and its tenure arrangements. It is followed by an analysis of Gol's strategy and civil society's view, regarding both REDD and tenure in Indonesia.

4. Tenure issues in Indonesia in the context of REDD

The Indonesian archipelago has the largest forest cover in South East Asia and the world's third largest tropical forest area, after the Amazon and Congo Basins (BARR ET AL. (2010), p. 1). However Indonesia also has one of the highest deforestation rates in the world. The Ministry of Forestry of the Republic of Indonesia (MoFor) estimates that two million ha of forest were lost per year between 2000-2005 (MOFOR (2008), p. 24). Hence the situation of Indonesia's natural forest estate can only be described as dramatic.

Uncertainty of tenure for both the community and industry contributed to land and forest degradation and at times, violence (CONTRERAS-HERMOSILLA & FAY (2005), p. 5). The major drivers of deforestation in Indonesia are illegal logging, mining operations, expansion of oil palm plantations and increasing pressure on land, forests and other natural resources through population growth and poverty (DOYLE (2009), p. 93, GAUTAM ET AL. (2000), p. 14). Illegal logging in particular is a huge problem that was exacerbated by decentralisation policies in the late 1990s and early 2000s. Interpretations of the new laws caused problems between district governments and MoFor, who controlled forest resources and had authority to grant concessions. Enforcement of forest laws in general has been lacking and the conflicts between MoFor and district heads over forest resources have weakened forest law enforcement further by creating a confusing situation that was exploited by rent-seeking and corrupt behaviour. (DAVIET ET AL. (2009), p. 24)

Indonesia is one of the world's largest emitter of CO₂ from deforestation and forest land use change (BARR ET AL. (2010), p. 2) and therefore it is critically important that Indonesia is considered with regard to international efforts to tackle climate change. In September 2009 President of the Republic of Indonesia, H.E. Dr. Susilo Bambang Yudhoyono declared Indonesia's voluntary target to reduce its emissions by 26% in 2020, compared with the

business as usual scenario and by 41% with international assistance (BARR ET AL. (2010), p. 2). Most of this target is supposed to come from the forestry sector. Its political will and the crucial importance of reducing emissions from the forestry sector, make Indonesia one of the countries on which the REDD demonstration activities are focusing.

4.1 Tenure system in Indonesia

The utilisation of and access to land and forest resources will play a decisive part in the future development of Indonesia, since even today, a large part of the Indonesian population live in rural areas and gain their livelihoods from the agrarian or forestry sectors, and thus land tenure for the Indonesian population must be regarded as being crucial (WINOTO (2009), p. 1). The division of land policy and land management between forest areas and non-forest areas leads to numerous problems, in particular with regard to land use planning and the recognition of *adat* rights. The *de facto* existence of two parallel legal systems, *adat* law and statutory law, is also problematic. These two legal systems are described below:

4.1.1 Statutory tenure rights

The colonial government's legal system to administer the large expanse of natural forests in Indonesia laid the foundations of an approach to state forest administration that was carried on after independence. That system vested exclusive control of forest resources in the government. (GALUDRA ET AL. (2007), p. 2)

With Indonesia's independence, the 1945 Constitution, as well as various other pieces of legislation, made it clear that all natural resources were to be controlled by the State. The government, representing the State, was responsible for assuring that these resources would be managed to enhance the welfare of the Indonesian people (RRI (1945), Article 33.3; RRI (1960), Article 2).

After the constitution, the most important act regulating natural resources was the TAP MPR IX/2001. This act was signed into law by the People's Assembly in 1999 and requires the government to review, revoke and harmonise all conflicting laws relating to land and other resource tenure because of their negative effects on poverty alleviation and on natural resource conservation and management. Unfortunately the Act has not yet succeeded in leading to an agreement of the parties on tenure arrangements and has still to be put into effect (COLCHESTER ET AL. (2006b), p. 13). The Agrarian Law of 1960 and Forestry Law of 1999 are the two most important pieces of legislation that fall below a TAP MPR IX/2001 in the hierarchy of land and natural resource regulation.

The 1960 Basic Agrarian Law

The Basic Agrarian Law of 1960 (BAL) covers the entire Indonesian land base. The original aim of the BAL was to dissolve the existing dual legal system (western law and *adat* law) from colonial times (CONTRERAS-HERMOSILLA & FAY (2005), p. 9). Practically however, Indonesia is still experiencing a land tenure dualism. Besides the fixing of ceilings and the exclusion of foreigners from landownership, BAL Article 16 defines seven types of land rights with varying degrees of tenure.⁵ The most encompassing and secure, as viewed from the general western legal perspective, is the right of ownership (*hak milik*). The remaining six types are forms of usufruct rights on lands that have been determined by the State to be under state control (CONTRERAS-HERMOSILLA & FAY (2005), p. 9). Land is divided into Customary Lands, where rights can be recognised to have existed prior to the enactment of the BAL and State Lands which are open for distribution to private entities. (GOVERNMENT REGULATION 24/1997)

According to BAL Article 19, all land should be registered. However, due to cumbersome titling processes, registered parcels cover only about five per cent of the land (LAND EQUITY (2006), p. 36). Land registration, land use mapping and land certification of non-forest lands fall under the responsibility of the National Land Bureau (BPN).

The 1999 Basic Forestry Law

The 1999 Basic Forestry Law (BFL) empowers the Ministry of Forestry (MoFor) to determine and manage Indonesia's Forest Zone (ROI (1999), Article 4). The law divides the Forest Zones into two distinct areas: State Forests, where there are no private rights over the land and Private Forests, where there are private rights attached (ROI (1999), Article 5).

Forest Zones

To define the Forest Zone, gazetting was carried out (Forest Boundary Setting by Consensus (TGHK)). Through desk studies and vegetation maps based on remote sensing imagery (CONTRERAS-HERMOSILLA & FAY (2005), p. 10) 120 million ha of Forest Zone (*Kawasan Hutan*) were legally designated, corresponding to 62% of the total land surface of Indonesia (GALUDRA ET AL. (2007), p. 1). This "consensus" boundary setting was criticised for ignoring local participation and violating local rights (FAY ET AL. (2000), p. 12). Local governments often contested both the boundaries and the constraints placed on their development options

⁵ Right of ownership (*hak milik*), right of exploitation/cultivation (*hak guna usaha*), right of building (*hak guna bangunan*), right of use (*hak pakai*), right of lease (*hak sewa*), right to clear land (*hak membuka tanah*) and right to collect forest products (*hak memungut-hasil-hutan*).

by the forest use categories.⁶ In addition results are highly uneven in quality (CONTRERAS-HERMOSILLA & FAY (2005), p. 11).⁷

According to the report of the Indonesian Forest Climate Alliance (IFCA), nearly 2,000 cases of conflict affecting some 600,000 households over more than 10 million hectares of forest land have been documented in Indonesia during the last 40 years. A significant cause of these conflicts has been dispute of functional forest zoning under the TGHK. According to the IFCA report conflicts are likely to continue until the TGHK system is reviewed and a new and real consensus reached with local communities (MoFOR (2008), p. 139).

State Forest Zones

According to BFL only that part of the Forest Zone that is without other rights upon it can be legally defined as State Forest Zone. However, the interpretation of the BFL by most members of MoFor is biased towards defining State Forest Zone as all areas delineated as Forest Zone that do not have land titles issued by the National Land Bureau (BPN) in accordance with the BAL. The elucidation of the BFL states that, in principle, all areas under customary claims fall within the State Forest Zone category (CONTRERAS-HERMOSILLA & FAY (2005), p. 11). This is in contradiction with the Government Regulation 24/1997 by which customary rights can be claimed and recognised to have existed prior to the BAL.⁸

Private Forest Zones

Similar to the State Forest Zones, the State has hardly determined if local rights exist in Private Forest Zones and most of the land remains “unregistered” and under state control (CONTRERAS-HERMOSILLA & FAY (2005), p. 10). Formally no further action can be taken before the land ownership status is classified through registration or through the formal State Forest gazetttement. However, in practice industrial resource extraction and land use licenses have been awarded for areas where the State has yet to determine whether rights exist.

In practice, all forest areas in Indonesia are being treated as if they are owned by the State (COLCHESTER ET AL. (2006b), p. 14).

⁶ The forests have been categorised as Production Forests (57.6%), Protection Forests (25.7%) and Conservation Forests (16.7%) (MoFOR (2010b)). Within each of these categories there are a number of other functional zones which constrain the range of uses to which the forest can be put (MoFOR (2008), p. 10).

⁷ Large areas such as grasslands and settlements that do not qualify under the forest definition in the BFL are included in the Forest Zones. According to MoFor data, 33 million ha of Forest Zones have no trees at all. On the other hand, some 8 million ha of forests are not included as parts of the Forest Zones (CONTRERAS-HERMOSILLA & FAY (2005), p. 11).

⁸ In order to determine the status of local rights within the Forest Zone, a process was created in which communities can sign so-called Forest Delineation Process Documents (BATB) if they have no claims over the area. Only then can the area be legally and legitimately declared as State Forest Zone. In early 2005, the delineation process had covered only 12 million ha as State Forest Zone, which is equivalent to 10% of the 120 million ha of Forest Zone, leaving 108 million ha uncertain as to the nature of rights attached (CONTRERAS-HERMOSILLA & FAY (2005), p. 11).

Related Legislation

The legal framework is additionally complicated by a number of related laws that indirectly have an impact on the way in which natural resources are managed and on the clarification of rights. There are over 2,000 pieces of legislation, regulations and standards concerning land use and tenure (CONTRERAS-HERMOSILLA & FAY (2005), p. 13). The present land and natural resource laws and rules are overlapping, contradictory and confusing, simply non-existent or when existent rarely enforced. This explains the gap between what the law requires (formal rights) and what really happens in practice (informal rights) in Indonesia regarding land and forest tenure (COLCHESTER ET AL. (2006b), p. 13; CONTRERAS-HERMOSILLA & FAY (2005), p. 15). Contradictions and inconsistencies, together with unclear responsibilities and authority result in opportunities for corruption, abuse and in an extreme lack of uniformity in the application of the law (CONTRERAS-HERMOSILLA & FAY (2005), p. 14). As a consequence of legal confusion, most of the wood harvested is illegal.

4.1.2 *Adat* law

“*Adat* refers to the cultural beliefs, rights and responsibilities, customary laws and courts, customary practices and self-governing institutions shared by indigenous groups.” (ALCORN & ROYO (2000), p. 4) It regulates behaviour between individuals as well as within and between families, communities and outsiders and the relationships between people and nature in a location-specific way.⁹ (ALCORN & ROYO (2000), p. 4)

The Indonesian Constitution implicitly recognises *adat* rights and institutions, however they are subordinated to other national objectives as the constitution gives the State a “controlling power” to allocate land and natural resources in the national interest. (ROI (1945), Article 18B(2) and 33(3))

Adat rights are also recognised in the BAL but they are subordinated to an unusual degree to state interests. Article 3 of the BAL states that “...rights of customary law communities should be recognised, as long as these communities really exist, and [the exercise of these rights] is consistent with national and State interests....” (ROI (1960), Article 3). Thus the State alone regulates the ownership of natural resources and determines specific conditions under which customary communities are considered as still being in existence (COLCHESTER ET AL. (2006b), p. 49). Procedures for the recognition of “communal reserved land title” for *adat* communities laid out in a 1999 ministerial decision (ROI (1999)), resulted, in large part, from the direct political pressure of the Indigenous Peoples’ Alliance (AMAN) (CONTRERAS-HERMOSILLA & FAY (2005), p. 9). However, as the corresponding guidelines and implementing procedures have not yet been adopted due to conflicts between national and

⁹ For detailed reading about *adat* rights in West Kalimantan see PELUSO (1993).

local authorities about the control over natural resources, this ministerial decision has still to be put into effect. (SAWIT WATCH & AMAN (2009a), p. 2)

Forestry Law 5 of 1967 recognised *adat* rights but treated them as weak usufruct rights and also subordinated them to the national interest. The 1999 Forestry Law added confusion by stating that certain areas of the Forest zone can be recognised as “*Adat Forests*” but these forests must be classified as “State Forest” which is, as already mentioned, a legal contradiction since “State Forests” areas are those forests where no rights are attached to the lands (ROI (1999), Article 1). Other laws and regulations consolidating the power of the state over forest lands were enacted during the post-independence period, deepening conflicts and intensifying the deterioration of *adat* institutions (CONTRERAS-HERMOSILLA & FAY (2005), p. 7). Most enacted laws were detrimental to the rights and livelihoods of *adat* communities as commercial timber extraction was given priority over local forest use (GALUDRA ET AL. (2007), p. 4). Today, only a small proportion of Indonesia’s land is titled (ALCORN & ROYO (2000), p. 4). Most forest lands are managed under *adat* law, but not recognised by the State, which allocates plantation timber concessions on *adat* lands that are owned and managed by communities (GALUDRA ET AL. (2007), p. 3). Effective recognition of customary rights on the ground is deficient (COLCHESTER (2006a), p. 16; GREGERSEN ET AL. (2004), p. 53; CONTRERAS-HERMOSILLA & FAY (2005), p. 9).

4.2 Outlook on REDDI strategy concerning tenure issues

Although REDD policies are now in place and demonstration activities are implemented in Indonesia, it is still too early to determine REDD’s empirical impacts on tenure issues. This section therefore reviews REDD strategy papers that have been produced by the Government of the Republic of Indonesia (GoI) in order to assess how these documents are dealing with governance issues in general and with tenure issues in particular, to figure out the strategy of GoI concerning tenure issues in REDD. The analysed documents in the following are the REDD regulations, the IFCA Consolidation Report, the Readiness-Plan for World Bank’s Forest Carbon Partnership Facility (FCPF), the Joint Programme Document (JPD) for UN-REDD Programme and the Letter of Intent (LoI) of the REDD cooperation between Norway and Indonesia.

4.2.1 REDD Regulations

Indonesia was the first country that developed specific REDD regulations, which was welcomed by the public as it showed GoI’s serious approach towards REDD and its emission reduction targets. Besides this, the regulations allow predictability of legal decision and legal

security. However the development process of the regulations with little involvement of local communities and the content of the regulations were widely criticised by civil society.

There have been three REDD regulations issued, namely *Permenhut No. 68/2008*, *Permenhut No. 30/2009* and *Permenhut No 36/2009*.

1) *Permenhut No. 68/2008*, issued 11 Dec. 2008, basically describes the permission and approval procedures of REDD's demonstration activities.

2) *Permenhut No. 30/2009*, issued 01 May 2009, regulates the general criteria, including tenure, for REDD implementation in the different forest types.

3) *Permenhut No 36/2009*, issued 22 May 2009, regulates the permission procedures for obtaining business licenses to engage in carbon sequestration or carbon storage activities in REDD projects. It includes revenue sharing procedures which vary between different types of forests and types of REDD projects (see Annex 3).

Under this regulation, REDD project developers are required to share between 20% and 70% of profits with local communities, depending on the type of forest, and between 10% and 50% of profits with the government (Roi (2009b)). The government share is to be divided proportionately, with central government receiving 40%, provincial government 20% and district government 40% (Roi (2009b)). Funding for the community, according to the regulation, is to be managed through a trust fund by the local community together with the village government (Roi (2009b), Article 17 (4)).

Due to its clarity of revenue distribution this third regulation was especially welcomed by civil society and the donor community. However in April 2010 the Finance Ministry asked for a revision because it would have been against the constitution. The Finance Ministry stated that it should be involved in determining the allocation and benefit distribution mechanisms of the REDD scheme to forest stakeholders (JAKARTA POST (04/14/2010)). The review of the regulation is expected to be completed by the end of the year 2010. It remains to be seen whether the distribution percentages in the formula will change and in what direction (REUTERS (2010)).

The main criticism from civil society on the content of the regulations concerns the definition of Customary and Village Forest. Adopted from the BFL, the REDD regulations define State Forests as forests located within an area not covered by land rights. Customary Forests are defined as "State Forest located within a customary community area" and are therefore treated as a sub-category of State Forest as well having no land rights. The same applies for Village Forests that are defined as "State Forest managed by a village and utilised for the welfare of the village and has not yet been imposed any license or right upon it". (Roi (2009a), Article 1)

It is encouraging that the REDD policy also provides guidelines for the involvement of local communities. According to the regulations, managers of Customary Forest or Village Forest can be so called “proponents” of REDD, and as such, the ones responsible for the implementation of REDD activities. However the application process is quiet cumbersome and it could become legally problematic and practically difficult for local communities to act as “proponents” of REDD activities. The obstacles include the requirement for the community to be licence holder of Customary or Village Forest. To get this, they must have official documentation stating that they have forest management rights for the respective type of forest plus a recommendation from the regional government. Additionally the location criteria for REDD implementation has to be fulfilled and a REDD implementation plan has to be prepared. (ROI (2009a), Article 8 and 10)

Only if these requirements are complied with, they can submit their application for the Forestry Minister's approval. It is doubtful that a lot of local communities or villages can fulfil these application requirements, enabling them to take part in and benefit from REDD (FOREST WATCH INDONESIA (2009), p. 3; FOEI (2008), p. 8).

4.2.2 IFCA Consolidation Report 2008

The Indonesian Forest Climate Alliance (IFCA) was formed in July 2007, to analyse how a REDD scheme could operate in Indonesia. Coordinated by MoFor, the IFCA consists of members of governments, private sectors, civil societies, scientific institutions and international partners. The results of the IFCA Consolidation Report 2008 regarding tenure issues are analysed in the following paragraphs.

In Indonesia, as in many developing countries, the government is struggling to improve the management of their dwindling forest resources. Despite government efforts, Indonesia still has large tracts of forests which are under intense threat (CONTRERAS-HERMOSILLA & FAY (2005), p. 1). The IFCA Report states that Gol admits that high deforestation rates in Indonesia are a consequence of inadequate forest governance (MoFOR (2008), p. 138). The IFCA Report recognises that institutions on the local level are better able to directly address the needs of local resource users or to establish and enforce local rules for resource management and governance, including tenure and to resolve local disputes. According to the importance of regional and local-level institutions in the context of resource protection and management, the report strongly recommends that they be given more capacity and clear authority in the REDD context to be able to tackle the drivers of deforestation with support of the national authority (MoFOR (2008), p. 137). But there is ongoing debate and conflict in Indonesia about the extent to which devolution and decentralisation of forest

management authority should take place.¹⁰ In addition to other reasons this situation of unclear authority and responsibilities leads stakeholder to operate in ways that are detrimental to sound forest management (CONTRERAS-HERMOSILLA & FAY (2005), p. 1).

4.2.2.1 Improved public access to forest resources

One focus of Gol's REDD strategy is to improve public access to forest resources and community involvement in forest management. This is explicitly aimed at land that is not occupied by any concession and which has become *de facto* open access because local communities had no legal authority or means to prevent outsiders from entering and using the resources (MoFOR (2008), p. 138). MoFor has issued the following regulations which offer four different opportunities of access improvement and rights on forest resources:

- “Collaborative Management in Protected Areas (PMK)”
- “Community Forests (HKm)”
- “Community Forest Plantation (HTR)” and
- “Customary Forests” (Hutan adat).

These regulations are the only “strategies” provided by Gol in the IFCA Report for addressing tenure issues of local communities with regard to REDD. Through their establishment, it is hoped to foster better access to forest resources and higher community involvement in the management of these resources. To facilitate their participation communities no longer have to form cooperatives to become licence holders (MoFOR (2008), p. 92). Gol wants to achieve an increased management presence through local communities which enables to exclude outsiders from using the resources and also prevents local communities from collaborating with outsiders to exploit the resources illegally (MoFOR (2008), p. 141). The latter occurs regularly due to a lack of alternative income possibilities and widespread poverty among forest-dependent people (BARR ET AL. (2006), p. 13, 117). The situation of Indonesian state forests being quasi open access resources, reflects the classical dilemma described by the environmental economists as “The Tragedy of the Commons”, where due to a lack of clear rules of resource access and use and tenure security, every individual tries to maximise his personal gain which leads to resource degradation and exploitation. The four initiatives which are supposed to overcome this situation are described below:

¹⁰ During the Post-Suharto period (since 1998), the central government was obliged to make concessions to widespread popular resentment of the undue powers of the executive (COLCHESTER (2006a), p. 24). A process of decentralisation was initiated by which a measure of authority over lands and natural resources was devolved to the districts, each with its own administration and legislature. Resistance from vested interests, poor planning and legal inconsistencies led to struggles over authority and revenues between central and local governments, to the gradual recentralisation of forest management and to local conflict about resource access and revenue distribution (BARR ET AL. (2006); COLCHESTER ET AL. (2003), p. 246–262).

1) Collaborative Management in Protected Areas (*Peraturan Menteri Kehutanan (PMK)*) (No P19/2004)

Even though various projects experimented with multi-stakeholder management of protected areas in Indonesia, this regulation is the first to provide a formal framework. Before its issue resource managers had no legal basis to address problems involving local communities in and around protected areas. However, the regulation does not create significant new opportunities for benefit-sharing from collaborative forest management because collaboration is limited to routine activities such as patrolling, reforestation and boundary marking. According to the IFCA Report the scheme therefore needs to be reviewed to identify opportunities for local communities to gain income (MoFOR (2008), p. 13).

2) Community Forests (*Hutan Kemasyarakatan (HKm)*)

(Government Regulation 6/2007)

According to IFCA the revised concept of Community Forest (HKm) is one of the most important changes introduced by Regulation 6/2007, and the most rapidly developed and implemented (MoFOR (2008), p. 13). When HKm was introduced first in 1998, it only provided short duration permits and implementation was weak. The revised HKm regulation allows for granting of conditional use rights over designated forest areas to community-based groups for up to 35 years.

The primary policy objective of HKm is poverty alleviation and the restoration of unproductive forest areas by poor rural communities. The focus is on restoring tree-cover, without prescribing particular species and management practices (in contrast to the HTR concept). Timber production is not allowed, but non-timber forest products (NTFPs) may be collected and tree-based agricultural systems that have already been established are permitted. (VAN NOORDWIJK ET AL. (2007), p. 9)

According to the IFCA Report the new approach is being accepted by communities and within MoFor. The report further states that "HKm comes closer than any previous scheme in achieving multi-stakeholder agreement on a set of rules to regulate access to resources" (MoFOR (2008), p. 13). However its implementation is still slow. From the target to establish Community Forests on 400,000 ha by 2009 and 2 million ha by 2012, only 6,000 households over an area of more than 8,000 ha have been given certificates so far. Community Forests are therefore still in the early stages of being implemented. In Annex 4 a successful example of an Hkm project in Sumberjaya is given.

3) Community Forest Plantations (*Hutan Tanaman Rakyat (HTR)*)

(Government Regulation 6/2007)

Regulation 6/2007 also provides for Community Forest Plantations, a new type of concession allocated to local communities for a period of up to 100 years (VAN NOORDWIJK ET AL. (2007), p. 5). This long duration is a big step towards effective local incentives for sustainable management (VAN NOORDWIJK ET AL. (2007), p. 1).

The HTR license is given to a group of households, with each household allowed to manage, but not to own, up to 15 ha of land within logged over areas and degraded portions of the production forest zone for planting trees of recommended species which they can then sell. The primary policy objective is to increase forest contribution towards economic growth, to reduce and minimise national unemployment and poverty (pro-growth, pro-job, pro-poor) and to secure supplies of fibre for the pulp and paper industry (VAN NOORDWIJK ET AL. (2007), p. 15). The allocation of land is supposed to be done with local government consultation (“clean and clear”). However, field investigation by ICRAF suggests that large proportions of the land designated for Community Plantation has already been cultivated by local farmers, highlighting the need for government flexibility in the selection of species and in the design of the plantations. Rigidity may interfere with the commitment of communities to accept the opportunities which these initiatives provide and could be counterproductive to the ultimate objective of growing more plantation pulp wood (MoFOR (2008), p. 13).

Besides this, the main concerns are how and from what sources to obtain the budget needed for this programme, accountability and the high potential for land conflict resulting from incomplete data availability on the legal status of land in the MoFor (VAN NOORDWIJK ET AL. (2007), p. 21). Consequently, the “clean and clear” policy of the State Forest cannot be easily achieved.

4) Customary Forests (*Hutan adat*)

(Government Regulation 6/2007)

Regulation 6/2007 also provides for the designation of Customary Forests as a legally recognised category within the State Forest Zone. However, designation of a Customary Forest requires prior recognition of the *adat* community that will hold rights to manage it. The respective Ministerial Regulation 5/1999, already mentioned in 4.1.2, has due to conflict at the local level as well as between customary institutions and MoFor, which claims ultimate authority over national forests, not been implemented. (SAWIT WATCH & AMAN (2009a), p. 2; DAVIET ET AL. (2009), p. 13) According to the IFCA Report MoFor and AMAN have announced that they will work together to compile an inventory of customary tenure claims in the Forest Zone as a basis for the implementation of this regulation. (MoFOR (2008), p. 13)

According to the Indonesian REDD strategy, MoFor has through these arrangements and regulations, together with the BFL provided a “strong legal framework” to improve access to and the management of forest resources” for people around the forest (MoFOR (2010a), p. 9). Additionally it is stated that these policies show that Indonesia has a “strong commitment to accommodate different interests related to forestry development” (MoFOR (2010a), p. 5). Even though it is positive that MoFor aims to facilitate local access to forest resources, this optimistic appraisal cannot be fully shared due to weak implementation of the respective regulations. Most of them have not been implemented in any significant way and most forest dwellers continue to access forest resources outside of the formal system (DAVIET ET AL. (2009), p. 13). Less than 0.25% of the forest estate has been accorded to communities under these options. By contrast some 34% of forests have been allocated to private companies for logging and plantations (FAO (2006b); COLCHESTER & FAY (2007), p. 16).

The way in which the regulations have been implemented up to now is not far-reaching enough to empower local communities to have a real stake in control and protection of forest resources in Indonesia. According to SUNDERLIN ET AL., Indonesia is one of the few countries with high forest cover where the share of communities in forest management decreased between 2000-2008 (SUNDERLIN ET AL. (2008b), p. 8).

The extent of tenure security given to local communities through them is insufficient, especially as they are the only approach of GoI towards local communities and their rights to access and use forest lands in the REDD process in Indonesia. This must be emphasised in particular as the report also mentions that GoI plans vast expansions of plantation areas (MoFOR (2008), p. 100), which will probably account for a more extensive area than the community schemes. Will this constrain the access and use of local communities in a countermove? Are the areas under community management and control still effectively increasing through REDD under these conditions?

Even though good examples are given such as the Sumberjaya HKm programme (see Annex 4), overall progress in implementing HKm schemes has also been very slow and the successful projects have required substantial, sustained and costly external support (CONTRERAS-HERMOSILLA & FAY (2005), p. 25). Hesitant government approaches towards the projects and suspicion by the communities towards the government were mainly overcome by external help and support. How are these collaborative management schemes supposed to work without external support? More has to be done to strengthen implementation and to make these schemes work effectively. It is important on the one hand to enable local

communities to have a stake in forest management and to give them security for their subsistence and livelihoods. On the other hand the licenses of these management schemes seem to be the only possibility to enable local communities to participate in and benefit from REDD in Indonesia.

More generally, it can be criticised that Collaborative Forest Management (CFM) designs in Indonesia are mainly discussed as alternatives to the legal recognition of customary community ownership rights, not as complements (CONTRERAS-HERMOSILLA & FAY (2005), p. 24). Precisely the lack of secure land tenure often leads to poor results in co-management resource projects in Indonesia. Communities for example, do not feel compelled to protect the resources and illegal activities are common. (CONTRERAS-HERMOSILLA & FAY (2005), p. 26) Again a lack of clear rules and responsibilities show its effect in resource exploitation. For effective resource protection, it is necessary to recognise, enforce and protect customary rights and to provide tenure security.

The main problem with CFM schemes is the tendency of government institutions in Indonesia to keep control of key decisions and to be reluctant to allow any form of meaningful community participation in decision-making. Consequently the State retains final authority and local communities are only granted management and use rights in exchange for following certain rules of behaviour. Therefore CFM schemes differ from programmes to grant legal ownership to communities in the very important aspect of empowerment. (CONTRERAS-HERMOSILLA & FAY (2005), p. 25)

It would be important that governments (at national, regional and district levels) have more confidence in the management abilities of the local communities so that they devolve more authority and long-term rights to access, use and control resources, to make collaborative schemes work effectively and to enable sustainable resource management in the long-term.

4.2.2.2 Further statements about tenure

Besides these regulations tenure issues are not further dealt with in detail in the IFCA Report. The report rather focuses on technical aspects of REDD's implementation in Indonesia.

Regarding forest governance, including tenure, the report gives a generalised outlook. It promises an "expanded legal framework for community level involvement in REDD projects" (MoFOR (2008), p. 141). Additionally the report predicts that "the implementation of REDD in Indonesia will lead to greater stakeholder involvement than ever before in the management of Indonesia's forests" (MoFOR (2008), p. 145). However it does not provide any evidence of progress in meeting this goal. Besides the weakly implemented regulations, no other

approaches are recommended on how to achieve this extensive involvement or how the weak implementation can be overcome. The statement that “a great deal of work is underway to improve forest management schemes and land tenure” remains vague, and does not explain which steps will have to be taken to address management and tenure issues (MoFOR (2008), p. 71).

The report admits that more has to be done to clarify and recognise customary rights of local people, to solve competing claims and that forest land tenure challenges have to be faced (MoFOR (2008), p. 141). Among these challenges the confusion about which legal rights to land can be established or held, by whom and by which administrative and legal procedures is mentioned. This confusion leads to conflicts, because duties, responsibilities and authority issues are not clearly regulated and represents an obstacle for good forest governance and sustainable forest management. The report acknowledges that non-formal and formal tenure arrangements, especially those under customary (*adat*) law, are additionally vulnerable to legal and illegal challenges including through violent conflict. It is further stated that complicated and sometimes contradictory regulations governing land ownership and use, together with a lack of consistency and transparency in their enforcement, institutional weakness and conflicting or unclear jurisdiction of agencies are not able to ease these confusions. (MoFOR (2008), p. 141) These problems build a vicious circle as they overlap and aggravate one another. Politically weak institutions can do little to resolve conflict arising from overlapping and contradicting laws and regulations but rather aggravate the existing problems, leading to more conflict.

To address this challenging forest and land tenure situation, the report recommends that in line with reforms in other parts of government, MoFor may undertake institutional and management reforms to clarify responsibility and to devolve management authority to forest management units (KPH) linking MoFor with local government and local stakeholders. (MoFOR (2008), p. 143) The report does not detail ongoing efforts or a timeframe by which to implement the described institutional reforms to ensure that they take into account existing REDD implementations.

4.2.3 Bilateral cooperation between Norway and Indonesia

On 26th May 2010, representatives of the Government of the Kingdom of Norway (GoN) and the Government of the Republic of Indonesia (GoI) signed a Letter of Intent (LoI) over an amount of US\$1 billion aimed at reducing emissions from D&D in Indonesia. This represents one of the largest ever bilateral initiatives to combat environmental degradation (CIFOR 2010). Frances Seymour, Director General of the Center for International Forestry Research (CIFOR), stated that this commitment could be a “game-changer” for forest management in

Indonesia and for meeting its national carbon emissions reduction targets (CIFOR 2010). Even though improved forest management in Indonesia has been supported by donors for decades, this initiative is seen differently by experts because never before has a contribution been this significant in terms of both size and ambition and according to CIFOR never before so clearly tied to performance. However the experts warn not to underestimate the challenges ahead, including the resistance of those with vested interests in the *status quo*, and gaps in institutional capacity regarding transparent and accountable implementation (CIFOR 2010).

Civil Society Organisations (CSOs) also welcome the Norwegian commitment to Indonesia but fear that REDD investments will fail if they are not tied to explicit terms and conditions. An organisation that followed the negotiations between GoN and Gol intensively is the Rainforest Foundation Norway (RFN). In February 2010, when negotiations between Gol and GoN were still in progress, the RFN issued a series of “Recommendations regarding a bilateral cooperation between Norway and Indonesia on REDD” due to concerns that REDD investments in Indonesia will fail without substantial reforms in the forestry sector. Among these recommendations are also action points regarding tenure reform, rights of local communities and their participation in REDD (RFN (2010)):

- RFN recommends a review of all Indonesian laws regulating natural resources and their tenure to address and revise weaknesses, contradictions and inconsistencies. These uncertainties and sources of conflict contradict the aim of protecting natural forest and securing the rights, interests and livelihoods of indigenous peoples and local communities. For the same reason illegal concessions and illegal logging have to be addressed. RFN hence requests enforcement of laws on illegal logging and corruption as well as an assessment of the legality of existing concessions. Those granted outside the law should be cancelled and a moratorium on new concessions instituted. Additionally they demand for an immediate, permanent ban on any and all further clearing and/or conversion of peat lands. (RFN (2010), p. 2)
- With regard to local communities' rights RFN requests that rural land rights issues and tenure insecurity are addressed in accordance with international standards and instruments. Indigenous peoples' right to FPIC in relation to any decisions taken in the REDD national process that may affect them has to be obtained. Local communities' access to REDD decision-making processes as well as their participation in the REDD implementation activities should be ensured. RFN further requests that models for revenue sharing and equitable distribution of benefits and complaint mechanism for local

communities are established. (RFN (2010), p. 3) RFN argues that systems for monitoring, reporting and verification (MRV) must besides emission reductions also cover social impacts and safeguards and emphasise the role of local communities as key actors in the MRV process from design to implementation (RFN (2010), p. 4).

Only some of RFN's recommendations have been included in the agreement text, such as the suspension of new concessions for the conversion of peat and natural forests (LoI (2010), VII, c, i). However this is a reduced commitment as it only applies for new concessions and is limited to a two year period, while RFN recommended a ban. The fact that no start date is given for the suspension might be used as a loophole to hand over concessions to plantation companies in the remaining time. It is possible that the agreement in this form - without further details and a start date - could actually result in a short-term acceleration of the rate of deforestation as the suspension seems not to affect concessions for clearance that have already been awarded, but not yet cleared. In consideration of the high deforestation rate in Indonesia, this formulation in the LoI is not specific enough to show serious engagement to stop the conversion of natural forests and to protect forest resources neither for REDD nor for the sake of protecting the livelihoods and rights of indigenous peoples and other forest-dependent communities.

Several of RFN's key recommendations have not been included in the Letter of Intent, such as an explicit recognition of indigenous peoples' rights and the addressing of land rights issues and tenure insecurity. Neither is there any agreement to establish a complaint mechanism for local communities and indigenous peoples.

The LoI does not refer to the rights of indigenous peoples at all. It simply states that Indonesia and Norway intend to "give all relevant stakeholders, including indigenous peoples, local communities and civil society [...] the opportunity of full and effective participation in REDD planning and implementation." (LoI (2010), III, b) There is no mention of the principle of FPIC or of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and how the participation will be ensured. One of the few considerations of social issues is that GoN and GoI will "take appropriate measures to address land tenure conflicts and compensation claims." (LoI (2010), VII, c, iv). The document does not, however, provide information about what is seen as "appropriate" measures to address land tenure conflicts in Indonesia. Additionally no mechanisms are recommended as to how conflicts could be prevented within the REDD implementation process although they should be given priority treatment to avoid further increasing conflict numbers through REDD.

Beyond that, the LoI can be criticised for its general silence. The focus of the bilateral cooperation so far, seems to be on activities relating to technical strengthening such as MRV and not taking governance and policy issues or socio-economic impacts into account. Given the immense amount of this bilateral cooperation this is especially disappointing. The only statements in this direction are that both participants of the cooperation intend to “seek to ensure the economic, social and environmental sustainability and integrity of [their] REDD efforts” (LoI (2010), III, g) and that “Indonesian effort and Norwegian support will focus on national level capability building, policy development and implementation as well as legal reform and law enforcement” (LoI (2010), VII). However strategies as to how these generally formulated issues can be addressed are not included in the agreement text.

More details on the bilateral cooperation between Norway and Indonesia are not available so far. The LoI states that details of the partnership will be further described in a separate document, which is expected by October 2010. It remains to be seen how specifically this document will actually describe the terms and conditions of the partnership and whether the focus will broaden to also include a governance and policy approach.

4.2.4 UN-REDD National Joint Programme Indonesia

The UN-REDD Programme was launched in 2008 as a collaboration of the UNDP, UNEP and FAO to help countries develop national REDD strategies. Nine countries¹¹ have been identified as pilot countries based on factors such as their emission reduction potential and their REDD readiness potential. National Joint Programme Documents (JPD) are being developed for each pilot country which include an overview of the country's situation with regard to forest laws and management and identify major outcomes to be achieved using UN-REDD funds. The submitted JPDs are reviewed and assessed by the UN-REDD Programme Technical Secretariat. Approved JPDs are then presented to the Programme Policy Board which is responsible for programme oversight, final decision and budget allocation. The following analysis of the UN-REDD Programme in Indonesia with regard to tenure issues and local communities' involvement is based on the publicly disclosed Indonesian National Joint Programme Document (JPD) from November 2009 and its reviews.

¹¹ Bolivia, the Democratic Republic of the Congo, Indonesia, Papua New Guinea, Panama, Paraguay, Tanzania, Vietnam and Zambia. In addition to its nine initial pilot countries, the UN-REDD Programme supports 18 partner countries across Africa, Asia-Pacific and Latin America. These partner countries are: Argentina, Ecuador, Cambodia, Costa Rica, Kenya, Mexico, Nepal, Nigeria, the Philippines, Republic of Congo, Solomon Islands, Sri Lanka, Sudan, Bangladesh, Bhutan, Central African Republic, Colombia and Guatemala.

The objective of the UN-REDD programme is “to support GoI in attaining REDD-Readiness” and to implement a fair, equitable and transparent REDD. In order to secure this objective, the programme will pursue three outcomes, namely strengthening participation and consensus, establishing fair payment and MRV systems and capacity building (JPD (2009), p. 6). On standards, the UN-REDD Programme is committed to the application of a rights-based approach and to adherence to the UNDRIP (GRIFFITH & MARTONE (2009), p. 14). That means that, among others, the Programme should respect the right to FPIC, and recognise indigenous peoples’ collective land and territorial rights. GRIFFITH & MARTONE argue that despite that commitment, the Programme neither makes REDD funds conditional on rights recognition (GRIFFITH & MARTONE (2009), p. 1) nor are there explicit plans to develop criteria, indicators and tools to monitor human rights impacts and governance performance in REDD programmes (GRIFFITH & MARTONE (2009), p. 14). It is not clear how the UN will ensure that its commitment to a rights-based approach is applied in practice or how it will respond to indigenous peoples’ calls for the UN-REDD Programme to develop compliance procedures and accountability mechanisms for its activities (GRIFFITH & MARTONE (2009), p. 14). The JPD acknowledges the need for rights based approaches and inclusion of local and indigenous groups, but neither a clear role for institutional support for these groups nor legal frameworks that uphold the rights of forest-dependent communities are defined. The situation regarding indigenous land rights is not discussed at all in the JPD. (DAVIET ET AL. (2009), p. 22)

The JPD addressing tenure issues

Regarding tenure issues, the UN-REDD programme recognises that safeguarding the rights of local communities in any REDD scheme is critical (UN-REDD (2010)). Because on one hand where tenure or other local community issues are unresolved or continue to be a source of conflict, it will be very difficult to implement REDD because investors do not want to get involved and/or exacerbate these problems. On the other hand because poorly implemented REDD activities can leave people marginalised. The Indonesian JPD acknowledges that past REDD initiatives and attempts to develop REDD strategies in Indonesia have not adequately addressed tenure issues (JPD (2009), p. 16). The document, however, does not provide any plans for how this will be achieved through any of the current REDD strategies in the country. The JPD recognises the need to address conflicts between MoFor and local governments over forest resources and associated revenues that facilitate corruption, illegal logging and weak law enforcement through unclear allocation of responsibilities (JPD (2009), p. 18). However, it does not discuss any legal or policy options for achieving steps for clarifying confusion over management of resources, strengthening law

enforcement in forested areas or supporting efforts for stopping illegal logging. The JPD also details potential conflicts over land allocation, planning, land use and rights, which are exacerbated by laws on spatial planning and forest use planning that overlap. It is admitted that these conflicts could present problems for REDD (JPD (2009), p. 10) but without further discussion of existing methods of resolving conflicts or of substantial plans to address them (DAVIET ET AL. (2009), p. 22), only stating that REDD should work to ensure forest rights (JPD (2009), p. 16).

While the discussion of the challenges around tenure and land rights for REDD implementation is relatively detailed, it does not explain how the UN-REDD Programme will respond to the need to address these issues. The WRI working paper recommends in this context that specific steps should be identified by which the UN-REDD programme will begin to address governance issues raised, particularly around land tenure and law enforcement (DAVIET ET AL. (2009), p. 7).

The JPD addressing community participation

The JPD is also weak in providing specific statements regarding GoI's strategies to increase community participation in forest management. It remarks that the new forestry laws which aim to support community forest management, customary access rights and collaborative management (discussed in 5.2.2.1) brought about important changes (JPD (2009), p. 7), but there is no discussion of the extent to which these measures have been implemented in reality or of the capacity of communities to establish such agreements. DAVIET ET AL. criticise that there are no strategies to strengthen implementation and support local forest management activities, although the JPD emphasises throughout the document, the generation of local support for REDD through education and awareness efforts (DAVIET ET AL. (2009), p. 22).

The JPD addressing community consultation

The JPD mentions that an understanding of REDD impacts on the local supply level is limited, that local and village level support for REDD is low and that some local groups have significant misconceptions about REDD (JPD (2009), p. 31). Thus, the UN-REDD Programme's emphasis on education and outreach is aimed at addressing these concerns. DAVIET ET AL. argue that this approach focuses less on engaging local groups as stakeholders in the decision-making process and more on convincing them about the existing REDD concept (DAVIET ET AL. (2009), p. 22).

Based on a gap analysis undertaken to identify problems that might hinder Indonesia's ability to become REDD ready by 2012, the JPD identifies strengthening multi-stakeholder

consultation as a priority activity and a key mechanism for developing support for REDD (JPD (2009), p. 15). Planned activities with identified groups that need to be included in the REDD discussion include national and sub-national level consultations and an analysis of key REDD issues identified by stakeholders. However, the focus of the efforts is on “awareness raising” about REDD amongst various stakeholders and conducting training on REDD, with emphasis on enhancing capacity of local actors (JPD (2009), p. 21).

DAVIET ET AL. criticise that these strategies focus more on education of potential stakeholders than on creating an inclusive process for stakeholders to participate in development of REDD projects and that it is not clear whether the UN-REDD programme will also seek to engage stakeholders in decision-making about potential REDD strategy priorities (DAVIET ET AL. (2009), p. 7, 22).

The focus of the Indonesian JPD is also on awareness raising to create an enabling environment for reducing rates of D&D. This applies to both national political level, where policies such as expansion of oil palm would be competing with objectives of REDD and local district level where decisions have to be made with regard to alternative uses of forest lands or halting forest exploitation in favour of conserving those carbon resources (JPD (2009), p. 21).

The WRI working paper recommends that feedback from local stakeholders should be encouraged on the scope of the national JPD and proposed priorities for the REDD programme as it is essential to ensure that it is addressing stakeholder needs and will have real impacts on government and stakeholder decision-making (DAVIET ET AL. (2009), p. 7).

It is striking that despite the constant emphasis of the UN-REDD Programme on the involvement and the participation of indigenous peoples and other forest-dependent communities and on the recognition of their rights, no specific steps to achieve this aim are provided in the JPD. It is further noteworthy that although tenure insecurity causes wide-reaching rights violations in Indonesia an extensive discussion on mechanisms to address these problems is lacking in the JPD.

4.2.5 Forest Carbon Partnership Facility (FCPF)

The Forest Carbon Partnership Facility (FCPF) was announced at the Conference of the Parties in Bali (COP13) in December 2007 and became operational in June 2008. In March 2009, 37 countries¹² had been selected into the Readiness Mechanism based on Readiness Plan Idea Notes (R-PIN) reviewed by the Participants Committee and independent reviews by a Technical Advisory Panel (TAP). The selected countries become Country Participants and receive grant support to develop a Readiness Plan (R-Plan). (FCPF (2010))

Indonesia submitted its R-Plan in May 2009. This document together with reviews by the TAP and the WRI are analysed in the following paragraphs with regard to forest management, tenure issues, participation and involvement of forest-dependent communities.

The R-Plan addressing stakeholder consultation

FCPF's own rules that require prior consultation with forest peoples (FCPF Charter, Article 3) have not been applied in its early operations as governments developing REDD plans for the Bank have failed to properly involve forest peoples (GRIFFITH & MARTONE (2009), p. 1). The very limited public consultation on the Indonesian R-Plan is one of the major reasons for criticism by the civil society.

The Indonesia R-Plan refers to "extensive" stakeholder consultation on REDD through the Indonesia Forest and Climate Alliance (IFCA) process in 2008. The R-Plan documents the consultation process (R-PLAN (2009), Table 1, p. 13) including a summary of stakeholder comments and the responses to those comments. However, it does not document whether and how comments were actually reflected in the final output and only states that "all comments and suggestions will be accommodated wherever possible." (R-PLAN (2009), p. 19) Many comments were not even addressed within the given responses, such as the concerns raised about the rights of indigenous peoples (R-PLAN (2009), p. 18). Indonesian civil society groups have expressed dissatisfaction with the stakeholder engagement process and requested the government to improve the transparency and involvement of all stakeholders (SAWIT WATCH & AMAN (2009b)).

¹² Argentina, Bolivia, Cameroon, Cambodia, Central African Republic, Chile, Colombia, Democratic Republic of the Congo, Republic of Congo, Costa Rica, El Salvador, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guatemala, Guyana, Honduras, Indonesia, Kenya, Lao People's Democratic Republic, Liberia, Madagascar, Mexico, Mozambique, Nepal, Nicaragua, Panama, Papua New Guinea, Paraguay, Peru, Suriname, Tanzania, Thailand, Uganda, Vanuatu and Vietnam.

The R-Plan addressing tenure issues, forest governance and management

The Indonesia R-Plan is mainly based on the IFCA study results (MoFOR (2008)) and assesses therefore the drivers of D&D in Indonesia, their connection with governance and tenure issues as well as the resulting challenges very well (TAP (2009), p. 2).

Many critical governance issues relating to forest tenure, law enforcement, community forest management, spatial planning and zoning are described. However much more detail is needed how these goals might be achieved (e.g. “enforcing laws against illegal logging”), and specifically what will be required at the institutional level (R-Plan (2009), Table 4, p. 28). The problem of overlapping and unclear mandates between national and sub-national government entities is a theme throughout the R-Plan and will need to be dealt with. (DAVIET ET AL. (2009), p. 14)

Although the R-Plan provides a fairly comprehensive overview of existing forest policies, laws and plans relating to land tenure and forest use rights of indigenous peoples and other forest dependent communities (R-Plan (2009), Annex 1), a critical analysis of the implementation, outcomes and effectiveness of these policies, laws and plans in practice is lacking and the R-Plan does not detail ongoing efforts to address these issues, or mention complementary new approaches that might be attempted to achieve the REDD strategy outlined. According to DAVIET ET AL., the R-Plan would be significantly strengthened if it proposed specific elements of REDD implementation that might enable Indonesia to make progress on some of its critical underlying governance issues, especially where past progress has been difficult or blocked (DAVIET ET AL. (2009), p. 13).

When asked for activities for the national REDD strategy and implementation framework, the Indonesian R-Plan mostly proposes activities relating to technical strengthening, REDD demonstration activities, and institutional capacity building for REDD implementation. Broader governance-related activities that are crucial to the success of REDD – such as combating corruption or strengthening policy making processes to be more inclusive and transparent – receive little attention. In particular, few activities are proposed to clarify forest tenure, strengthen law enforcement and compliance, or reconcile competing sectoral priorities within land use planning. (R-Plan (2009), Component 4, p. 35)

The WRI working paper recommends approaching problems such as land tenure arrangements in an extensive process of consultation to address all issues supporting REDD. Furthermore it argues that governance issues must be addressed right from the beginning in a transparent, inclusive and accountable manner (DAVIET ET AL. (2009), p. 5).

One step in this direction can be found in Annex 1 of the R-Plan describing that MoFor is working with AMAN to compile an inventory of customary tenure claims (R-Plan (2009), Annex 1). However the document does not describe any other institutions or systems to uphold the rights of forest dependent people.

The R-Plan lists several “action plans” for improving forest governance (R-Plan (2009), p. 7). The WRI working paper states that robust systems of implementation for these action plans will be important as well as monitoring whether standards are being met and good governance practices are undertaken (DAVIET ET AL. (2009), p. 15). Although the R-Plan mentions the State’s goal to apply a “nationwide system of good governance at the local government level by 2008”, DAVIET ET AL. criticise that no evidence of progress in meeting this goal is mentioned (DAVIET ET AL. (2009), p. 13).

The R-Plan addressing the role of forest-dependent communities in REDD activities

The R-Plan adopts IFCA’s strategies on how to involve indigenous people and other forest-dependent communities in the REDD implementation. It clearly states that they have the same rights and responsibilities as other Indonesian citizens according to national regulations and recognises that they are most affected by deforestation (R-PLAN (2009), p. 26). According to the R-Plan the guidance at policy level is clear that REDDI must benefit local communities. They should take part in REDDI activities “according to their capacities and responsibilities”. The document further states that their “adequate involvement” in the implementation of REDD programmes will be key. Their “relevant traditional knowledge and wisdom” is stated to be the basis for identifying the best roles which local communities can play for REDDI implementation. (R-PLAN (2009), p. 26) These formulations are criticised by the independent review as being too generalised and to imprecise (TAP (2009), p. 6). TAP requests the elaboration of the phrases “adequate involvement”, “relevant traditional knowledge and wisdom” of forest-dependent communities (R-PLAN (2009), p. 26) as well as “social equity and fairness” (R-PLAN (2009), p. 40), asking how they are defined and how they should be implemented (TAP (2009), p. 6).

The same applies for the concept of “pro-poor REDD” which the R-Plan aspires to implement (R-PLAN (2009), p. 36). This concept needs further elaboration as the R-Plan does not include discussion on the basic outlines and characteristics of a “pro-poor REDD” and how it will be implemented in operational terms. TAP emphasises that clear, secure and enforceable rights to carbon and related resources need to be ensured for forest-dependent communities if they are to benefit from REDD and recommends that the R-PLAN includes an explicit discussion on issues relating to tenure and carbon and forest resource rights and how these will be addressed in REDD design and implementation (TAP (2009), p. 11).

The R-Plan states that local communities will play an enormously important role for the success of REDDI in reducing effectively and sustainably D&D rates (R-PLAN (2009), p. 26). Their possible roles in REDD are described by degrees depending on their rights basis. It is suggested that groups of indigenous peoples could serve as REDD implementers in "Hutan Adat" (Customary Forest) and other forest dwellers as REDD implementers in "Hutan Desa" (Village Forest) or "Hutan Kemasyarakatan" (Community Forest), based on Regulation Permenhut No. 30/2009. In the event that local communities are not attached to any of those types of forest use rights, the R-Plan suggests their involvement in monitoring (especially ground-based inventory), securing forest resources on which they depend, and other roles "based on their capacity and customs" (R-PLAN (2009), p. 26). The R-Plan emphasises the responsibility of government and REDD actors to make sure that REDD activities benefit even the most vulnerable people who do not qualify for the above two roles (R-PLAN (2009), p. 27). This involvement by degree depending on the rights basis, makes clear how important tenure rights are for participation in REDD projects in Indonesia as dependence on the good will of the government increases with insecurity of tenure rights.

The R-Plan's promise that local communities must be and will be involved in REDD activities is questionable given the fact that their ability to play an active role in REDD activities is dependent upon their ability to secure legitimate forest use rights within the national forest estate (R-PLAN (2009), p. 26) which probably cannot be provided by the majority of indigenous peoples and other forest-dependent communities in Indonesia.

The R-Plan mentions in this context that the forest sector in Indonesia has undergone significant reform in recent decades and describes the new regulations (described in 5.2.2.1). However the plan does not address the problem that new regulations are not implemented in any significant way or discuss how these implementation gaps might be bridged or obstacles to progress might be overcome. Due to a lack of implementation most forest dwellers continue to access forest resources outside of the formal system. Significant gaps in implementation are often caused by conflicts between different government levels or between government and customary institutions. Although there are many cases of such conflicts in Indonesia which are likely to affect the implementation of REDD, the R-Plan only makes limited reference to conflicts (R-PLAN (2009), Annex 1) and does not detail whether or how tenure conflicts are dealt with at present, or could be addressed in the future. (DAVIET ET AL. (2009), p. 13)

Without forest use rights, communities will be limited to smaller roles in REDD implementation, such as monitoring activities (R-PLAN (2009), p. 26). To give local communities a real stake in REDD activities it should be a key part of REDD to strengthen and support the implementation. However no efforts to address these issues are mentioned

and there is little or no emphasis on local communities within the REDD strategy summary (R-PLAN (2009), Table 4, p. 28). The only real reference to communities within the REDD strategy is under “demonstration activities” at the provincial and district level to “enhance the capacity of local community groups, including *adat* communities to engage in forest management through REDD activities” (R-PLAN (2009), p. 31). Strategies and activities to achieve this capacity are critically important and should, according to TAP be a priority (TAP (2009), p. 13). They argue that the scope for capacity building and support should not be limited to silvicultural technical forest management aspects but should also include transfer of knowledge about REDD and forest policy, the development of capacity to negotiate and the development of skills needed to benefit from REDD activities and carbon markets (TAP (2009), p. 13).

The R-Plan addressing social impact analysis and alternative livelihood options

The R-Plan states the assessment of socio-economic impacts of REDD, including on local people as one key aspect of the REDD strategy (R-PLAN (2009), p. 40). However there is little information on what this might entail.

According to TAP the R-Plan could have benefited from a more thorough analysis of potential social and environmental impacts, including land tenure, and trade-offs (TAP (2009), p. 12). An explicit and in-depth assessment of who gains and who loses will have to be undertaken and should be central to subsequent discussions and decision-making about how to proceed (TAP (2009), p. 10). A major strategy in the R-Plan is the establishment of one million hectares of compensatory fast growing timber plantation resource by small holders (R-PLAN (2009), p. 44). This is significant and merits further elaboration. What are the risks and livelihood implications of this strategy and what measures will be put in place to promote successful outcomes, reduce the risk and manage possible conflicts? (TAP (2009), p. 13)

According to DAVIET ET AL., the quality of this socio-economic impact analysis will be an important input into the design of livelihood improvement programmes (DAVIET ET AL. (2009), p. 15). So far the only statement in the R-Plan about livelihoods and REDD is that communities are a source of pressure on forest land in Indonesia. The document explains that schemes to improve livelihoods of forest-dependent people have failed in the past because they have failed to pull people away from livelihoods where they are dependent on forest resources (R-PLAN (2009), p. 6). The R-Plan remains vague about a solution to this problem, only stating that “REDD-related financial resources can make it possible to finance

programmes that will help to create alternative and sustainable livelihoods" (R-PLAN (2009), p. 29). The R-Plan does not suggest what these programmes might entail in any detail. (DAVIET ET AL. (2009), p. 15)

4.3 Concerns of the civil society regarding REDD in Indonesia

To understand the concerns of the civil society with regards to REDD in Indonesia one has to be aware of the difficult relationship between the Government of Indonesia (GoI) and indigenous peoples and other forest-dependent communities in the country. These difficulties, resulting from decades of discrimination and violations of customary rights, are briefly described as follows. Subsequently, experiences of indigenous and other forest-dependent people with oil palm plantations in Indonesia are outlined, before concerns and criticism with particular regard to REDD in Indonesia and hence resulting requests of CSOs for the further REDDI process, are described.

4.3.1 General discrimination and violations of indigenous peoples' rights

Violations of the basic rights of the indigenous peoples have long been an aspect of their relationship with the Indonesian Government, particularly in the agrarian, forestry and mining sectors. (BALLARD (2001); HUMAN RIGHTS WATCH (2003); AI (2002)) This was acknowledged by the President of Indonesia on 10th August 2006, when he admitted that indigenous peoples' rights have often been sacrificed for national development (JAKARTA POST 08/10/2006). These violations are particularly evident in relation to indigenous peoples' rights to own and control their traditional territories and resources, their right to be secure in their means of subsistence, and their right to participate in and consent to activities that may affect them (UN (2007), Article 26 and 28). Indonesia is very weak in implementing national laws and international obligations relating to equal treatment of indigenous peoples in terms of access to political processes, access to information, proprietary rights over natural resource and consent on matters concerning them (RFN (2010)). The civil society is concerned that REDD will also be implemented at the expense of indigenous and other forest-dependent people and their rights.

The numbers of forest-dependent people in Indonesia are not known with certainty and estimates vary widely (LYNCH (1999), p. 1; COLCHESTER ET AL. (2005), p. 31) depending on definitions and estimation procedures employed. Even without the real numbers, Indonesia certainly has a large number of forest-dependent people, given the fact that it is the world's fourth-largest country in terms of population numbers (242 million), with 53% of the population living in rural areas (CIA WORLDFACTBOOK (2010)) and 62% of the land mass

officially being covered by forests (GALUDRA ET AL. (2007), p. 1). The absence of statistics about forest-dependent people is in itself a strong indication of the level of their marginalisation.

Many of the forest-dependent people live on land that is legally classified as state forest (STONE & D'ANDREA (2001), p. 125; TAULI-CORPUZ & TAMANG (2007), p. 7) and manage their resources through customary law. The Indonesian State subordinates these customary rights to statutory rights and most forest-dependent people lack secure land tenure arrangements (FOEI (2008), p. 7). The State controls most of the forest resources, allocates concessions for logging or plantations and will also allocate areas of the "State Forest Zone" for REDD. Communities whose cultures and subsistence are inextricably linked to forests are particularly vulnerable to these processes, and in many cases they lack any legal venue to defend their rights as a result of the State's claim of ownership over forest lands (see 4.1).

Large areas of forest lands traditionally managed and used by indigenous peoples and other forest-dependent communities have already been taken by the State for commercial purposes (TAULI-CORPUZ & TAMANG (2007), p. 7), conservation projects or for the central government's "transmigrasi" policy under which millions of people were moved from high population density areas in Indonesia to low population density areas. Throughout transmigrasi, indigenous peoples' lands were alienated and claimed by new settlers, resulting in population pressure and violent clashes between settlers and indigenous peoples until today. (CONTRERAS-HERMOSILLA & FAY (2005), p. 15) The World Bank, in its review of the transmigrasi programmes which it directly supported, recognised, for example, that "there was a major negative and probably irreversible impact on indigenous peoples," and it withdrew funding in the late 1990s. (WORLD BANK (1994)) Transmigration is directly responsible for indigenous peoples losing a large percentage of their traditional lands both due to the influx of migrants and to the logging and establishment of plantations that followed (CSOs INDONESIA (2007), p. 13).

In his speech to the *UN Permanent Forum on Indigenous Issues (UNPFII)*, RODOLFO STAVENHAGEN, rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, emphasised that the dramatic pace of deforestation as a result of State concessions and illegal logging lead to serious human rights violations as indigenous people lost their ancestral lands and territories. The systematic practice of displacement and forced removal of indigenous communities from their ancestral lands as a consequence of State policies aimed at economic development and growth, including the abolition of traditional forms of shifting cultivation or the eradication of illicit crops is of special concern. He further

stated that these violations of indigenous peoples' land and resource rights are a result of the State still failing to recognise indigenous title derived from ancestral possession and use. (STAVENHAGEN (2007), p. 3)

In Indonesia, the State and a few companies appropriated most of the resource rents while local populations were deprived of their customary access to forest resources. As a result conflicts between communities, government, timber concessionaires and plantation corporations multiplied and became endemic throughout Indonesia. (CONTRERAS-HERMOSILLA & FAY (2005), p. 15) By early 2008, BPN had documented 7,491 land tenure conflicts of which many relate to imposition of land concessions to private companies in indigenous areas. In the minds of rural populations who depended on forest resources for their livelihoods, the development and operations of timber concessions and plantations became associated with the abuse and deterioration of community condition. Mistrust in government and corporations grew in intensity (CONTRERAS-HERMOSILLA & FAY (2005), p. 15). When forest-dependent communities reacted violently because they lacked legal protection, the military suppressed protests and human rights abuses were common (HUMAN RIGHTS WATCH 2003).

Yet despite this escalating situation, the State has still not put in place measures to protect the rights of indigenous peoples and address the root cause of such conflicts (SAWIT WATCH & AMAN (2009a), p. 2). The vast majority of indigenous territories enjoy no effective legal protection and in fact safeguards are almost non-existent. As a 2005 Asian Development Bank Institute paper explains, "Forests are central to the economic livelihoods of the societies surrounding them. In Indonesia, the government often treats the indigenous people or forest villagers living in and close to the forests in the outer islands as if they do not exist." (MAUNATI (2005), p. 5)

Under these conditions of a *de facto* limited recognition of indigenous peoples and their customary rights, a general lack of tenure security and a centralistic policy on forestry, the implementation of a REDD scheme in Indonesia raises concerns of civil society that such implementation might even aggravate the violation of customary tenure rights.

4.3.2 Experiences with the expansion of oil palm plantations in Indonesia

In addition to general discrimination of indigenous peoples and other forest-dependent communities' rights by Indonesian law and policy, severe violation of their rights occurred especially with regard to the expansion of oil palm plantations. Tree plantations in Indonesia have since the 1980s been developed through the conversion of natural forests, in both good

and degraded conditions. Their establishment has been supported by the authorities and the military, and claims by locals related to land tenure were usually repressed. (PIRARD (2005), p. 85) Palm oil production often resulted in clear-cutting of indigenous peoples' forests in order to establish monocrop plantations, thereby destroying the ecosystems that indigenous peoples have depended on for millennia (STAVENHAGEN 2007). Experience with existing oil palm plantations in Indonesia gives evidence that indigenous peoples' fundamental rights to land and security over their means of subsistence have been violated, causing irreparable harm to their cultural, territorial and physical integrity (CSOs INDONESIA (2007), p. 1, 10). Their right to consent is not respected. Plantation expansions have led to lost resource access, evictions and further marginalisation of forest dwellers who depend on the forest resources for their livelihoods. Established on part of the traditionally occupied territories of the indigenous peoples, plantations have a wide variety of direct and indirect impacts¹³ (CSOs INDONESIA (2007), p. 10) and therefore come with serious social and environmental costs which adversely impact on indigenous peoples, forest-dwellers and the tropical rainforests (TAULI-CORPUZ & TAMANG (2007), para. 33). Palm oil companies strategically involve local agents and local government officials to encourage communities to transfer their lands (COLCHESTER ET AL. (2006b), p. 171). Often local people are left with no alternative but to become smallholders gathering palm oil fruit for the companies that manage the plantations (CSOs INDONESIA (2007), p. 1, 11).

WORLD BANK studies into the forestry sector in Indonesia also affirm that government policies of supporting the expansion of timber and oil palm plantations have "marginalised and alienated forest-dependent communities and indigenous peoples from traditional lands and uses, through denial of rights and access" and that such denials have been "backed by force" (WORLD BANK (2006), p. 2). In May 2007, STAVENHAGEN identified plantations in Indonesia as placing indigenous peoples "on the verge of completely losing their traditional territories and thus of disappearing as distinct peoples." (STAVENHAGEN (2007))

Disagreements over land allocation for oil palm plantations have become a major source of conflict in Indonesia, with SAWIT WATCH estimating that up to 1,000 communities are currently involved in palm oil related land conflicts (DILWORTH ET AL. (2008), p. 39). The Committee on the Elimination of Racial Discrimination (CERD) also observes "with deep

¹³ Cumulative impacts on communities involve serious health problems, including increasing malnutrition and increased mortality; increase of rates of sexually-transmitted diseases due to prostitution in plantation or logging estates. Also noted are the increased instances of exploitative and discriminatory working conditions, high rates of injury among forest and plantation workers; creation of dependency resulting in exploitative relations and corrupt patron-client relations between forestry officials and indigenous peoples. Such plantations have commonly been accompanied by a breakdown of traditional social structures, introduction of new inequalities, undermining customary laws, social support networks and systems of land management.(TAULI-CORPUZ & TAMANG (2007), para. 33)

concern" the high number of conflicts between indigenous peoples and palm oil companies throughout Indonesia (CERD (2007), p. 4). It further observes that "references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to guarantee their rights effectively" (CERD (2007), p. 4). The corresponding recommendations adopted by CERD directly address deficiencies in Indonesian law that restrict or nullify the full exercise and enjoyment of indigenous peoples' rights. A review of Indonesian laws is recommended "to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands." (CERD (2007) p. 4) The Committee further recommends that the State "secure[s] the possession and ownership rights of local communities before proceeding" with palm oil projects. (CERD (2007), p. 4)

4.3.3 Concerns and criticism regarding REDD

Poor design or implementation of REDD also has the potential to seriously impact upon the rights and livelihoods of forest-dependent communities and indigenous peoples, as already mentioned in 4.2.1 (FOEI (2008), p. 7). As REDD increases the value of forests, governments may be discouraged from conceding customary land rights to forest-dependent people (BROWN ET AL. (2008), p. 115). Tenure insecurity might lead to "land grabbing" and takeovers by local elites and wealthy land holders at the expense of poorer and vulnerable households (FOEI (2008), p. 8). REDD payments may also work as a disincentive for forest and conservation authorities to resolve existing disputes over land tenure leading them to claim the revenues themselves (GRIFFITH & MARTONE (2009), p. 23). Local communities may be forcefully evicted from their land and denied access to the forests that form the basis of their culture and livelihoods (FOEI (2008), p. 7). These arguments, which apply in general for all REDD activities world-wide, apply in particular for REDD in Indonesia and its forest-dependent people due to the outlined experiences of discrimination and violations of customary rights, especially with experiences of oil palm plantations in the past.

As a result of these experiences, forest-dependent communities and indigenous peoples are wary regarding large-scale projects in Indonesian forests, including REDD, especially regarding promises of benefit sharing and alternative livelihood options (FOEI (2008), p. 6). The civil society has grave concerns that a similar pattern of the oil palm plantations may be replicated with the implementation of REDD. They fear that commercial and political interests will rule REDDI (FOEI (2008), p. 7). Especially because the Indonesian government, despite its commitment to decrease emissions significantly, is still pushing the conversion of millions of hectares of forests into oil palm, pulpwood and other plantations (DTE (2008), p. 6; MoFOR (2008), p. 100). Aside from the obvious devastating impacts upon local communities,

biodiversity and increasing pressure on the remaining natural forests, plantations are acknowledged as only storing 20% of the carbon that intact natural forests are capable of retaining (HALL (2008), p. 23; MoFor (2008), p. 17).

Given this approach of GoI, together with policies which undermine forest protection on a massive scale and big business' influence over Indonesia's natural resources, civil society sees huge obstacles to achieve a quick reversal of deforestation in Indonesia. CSOs in Indonesia have long called for this influence to be reduced, so that more equitable ways of managing resources, which benefit more than just a small business elite, can be developed. WALHI (FoE INDONESIA) has repeatedly called for a national logging moratorium, while SAWIT WATCH has demanded a stop to the planned massive expansion of oil palm taking place on Sumatra, Kalimantan and in Papua (DTE (2008), p. 6). However their efforts so far have not been successful as GoI does not seem to reduce any economic activity in Indonesia's rainforests.

Also with regard to REDD, the CSOs argue that too much control is placed in the hands of MoFor that is strongly aligned with political and commercial interests (GRIFFITH & MARTONE (2009), p. 54; FOEI (2008), p. 6). They point out that the government plans to issue licenses for REDD concessions without respecting the right of indigenous communities to give or withhold their right to FPIC to planned developments, just as in the case of timber and plantation concessions. The CSOs fear that in the name of REDD, the government may also violate customary rights and impose involuntary resource use restrictions that will violate human rights. (GRIFFITH & MARTONE (2009), p. 54)

These concerns are fuelled by the fact that the national REDD programme assumes that the State has the power to issue REDD concessions to third parties in all state forest zone areas – an assumption that is questioned by indigenous and community organisations because most of Indonesia's national forests have not been properly registered (see 4.1.1) (GRIFFITH & MARTONE (2009), p. 54).

Mina Setra from AMAN stated that there is a fear that REDD could become a business like any other, in which developers can pay a fee or rent to the government for the use of a carbon as a commodity, including indigenous territories (UN-REDD (2008)).

FOEI surmises that governance, corruption and land tenure issues will be brushed aside when REDD is implemented as it currently exists, as powerful state and private interests compete to exploit the new opportunities REDD provides for profit generation (FOEI (2008), p. 13).

Many local civil society organisations (CSOs) remain sceptical as to whether REDD can be implemented in just and equitable ways in Indonesia. CSOs are concerned that the profit

motive will dominate carbon trading and that focusing on the carbon value of forests, ignores the many other functions of forests - such as livelihood provision for forest-dwellers, flood and landslide prevention and biodiversity protection - which should be valued too. (DTE (2008), p. 3)

Due to this situation AMAN emphasises the urgent need to address tenure issues in Indonesia's forests. They emphasise that the current lack of clarity over forest ownership also presents obstacles to any prospective REDD stakeholders that want to avoid violating internationally-recognised indigenous peoples' rights (DTE (2008), p. 9).

Besides the main concerns that REDDI will be driven by profit motives and that its impact on the livelihoods of forest-dependent communities and indigenous peoples will be ignored, the CSOs also criticise certain points of GoI's approach towards REDD, as well as formulations in the REDD regulations and the strategy papers produced by GoI and IFCA for the World Bank's FCPF and the UN-REDD Programme.

4.3.3.1 Approach of GoI towards REDDI

Little participation and involvement of local communities

The national REDD process has been widely criticised by the civil society for excluding their participation, opinions and concerns. Consultation and participation are the weakest points in Indonesia's approach towards REDD. CSOs state that those consultation processes which have been undertaken by GoI have been insufficiently detailed and transparent. Additionally most inputs from national NGOs and indigenous peoples were not well responded to by the Indonesian government and their involvement in drafting REDD regulations has in practice been very limited. GoI has tended to involve international institutions and international conservation NGOs instead. (FOREST WATCH INDONESIA, p. 3) In the CSOs' opinion these consultation processes reflect the general top-down approach of GoI concerning REDDI.

Many communities at the local level remain unaware of REDD initiatives currently being negotiated. They are poorly informed (FPP (2009), p. 7), not only about the REDD proceedings but also about their own rights. Civil society fears that the pattern of the consultation process will replicate implemented REDD activities and that indigenous and other forest-dependent people will hardly be involved and therefore will not participate in and benefit from REDD in Indonesia. The CSOs suspect benefit capture by the local elites, investors and land title holders so that the ones without formal title will not receive any benefits and that they will be curtailed in their use and access rights. Additionally due to their low bargaining power caused by insecure tenure rights, they do not possess the bureaucratic

or legal knowledge required for negotiations over REDD activities in many cases and run the risk of being overridden. (FOEI (2008), p. 7)

Indigenous communities have warned the government that they will reject the implementation of a planned carbon credit scheme - "no rights, no REDD" - unless the government guarantees their rights to earn their living from local forests (JAKARTA POST 07/01/2010). They find it controversial that indigenous peoples have very small carbon footprints but still are forced from their land to allow in oil palm plantations which accounts for new emissions. AMAN secretary-general ABDON NABABAN said that many indigenous communities were already protecting their forests by relying on their traditional knowledge and have practiced "small-scale REDD" because they depend on the forest resources for their livelihoods. He further mentioned that the indigenous peoples "only seek recognition of their land rights from the government, not money through REDD." (JAKARTA POST 07/01/2010)

No focus on governance issues and legal reforms

CSOs criticise that the current forest governance systems in Indonesia are not adequate for REDD. They argue that the forestry department is pushing ahead with REDD planning without addressing governance and tenure issues and thus continues to ignore possible rights violations of indigenous and other forest-dependent people. (DTE (2008), p. 9) AMAN is concerned that REDD could trigger new conflicts if land tenure disputes remained unsettled.

Gol seems to focus on requirements for sophisticated and complex carbon accounting and monitoring systems rather than on tenure and legal reforms to empower communities for forest protection (GRIFFITH & MARTONE (2009), p. 21). In particular, the rapid pace of REDD negotiations increases the fears that REDD programmes may be approved prior to the resolution of serious concerns, such as tenure and governance issues, corruption and elite capture, especially as several methodological problems, such as establishing effective MRV systems, still exist, which are seen by Gol as priorities (FOEI (2008), p. 12).

4.3.3.2 REDD regulations

For the creation of the REDD Regulation P. 30/Mennhut-II/2009, the Indonesian government organised two consultation meetings where civil society and indigenous peoples raised major concerns. However the government did not include any of the inputs from civil society in the final document (RFN (2010), p. 3).

SAWIT WATCH & AMAN fear that poor design and implementation of REDD activities and incentives risks widespread violations of the rights of indigenous peoples. Because of the

extensive geographic scope of proposed REDD activities in Indonesia and the potential for further alienation of indigenous lands they demand that the rights of indigenous peoples are fully accounted for and protected in any law or policy on REDD. According to SAWIT WATCH & AMAN, the regulation fails to do so and therefore poses a direct and significant threat to the livelihoods and customary rights of indigenous peoples within Indonesia (SAWIT WATCH & AMAN (2009a), p. 2). They argue that the REDD Regulation P. 30/Menhub-II/2009 is a prime example of the discrimination of customary tenure in current Indonesian law and policy (SAWIT WATCH & AMAN (2009a), p. 2). The regulation requires that the State is the sole regulator of forest areas without recognising or protecting the rights and forest stewardship role of traditional and indigenous peoples (SAWIT WATCH & AMAN (2009a), p. 2). The State is establishing regulations that continue to allow it to take over and issue concessions in forest land without FPIC in order to have access to international REDD payments (SAWIT WATCH & AMAN (2009a), p. 2). In their view REDD Regulation P. 30/Mennhut-II/2009 serves to reiterate existing violations of indigenous peoples' rights found in other national laws (SAWIT WATCH & AMAN (2009a), p. 2). For instance, the definition of "Customary Forest" in the REDD regulations which adopts the formulation of BFL where "indigenous or customary forest is state forest situated in indigenous law community area" (ROI (2009a), Article 1). Another critical point is the often praised opportunity for local communities to participate via Customary or Village Forests which is actually hindered by requirements for certificates and recommendations by the local government that can hardly be fulfilled and therefore participation is only possible *de jure* but not *de facto*. Current regulations surrounding REDD thus leave little room for Indonesia's indigenous communities to fully exercise their rights. If these concerns are not addressed prior to the implementation of REDD the CSOs fear disastrous consequences for Indonesia's indigenous peoples and forest-dependent communities. (FOEI (2008), p. 9)

FOEI criticises the fact that the regulation clearly places ultimate control of REDD in the hands of MoFor and see a serious threat that Indonesia's indigenous peoples will continue to be marginalised by any future REDD initiative when they consider the attitude MoFor has displayed towards them in the past. (FOEI (2008), p. 8)

CERD also expressed deep concern about Indonesia's ongoing failure to amend its national laws and to bring them into compliance with indigenous peoples' rights and the State's corresponding international obligations (CERD (2009) "... to ensure that the concept of national interest ... [is] not used as a justification to override the rights of indigenous peoples." (CERD (2007), p. 3). CERD specifically identifies both BFL and the REDD Regulation P. 30/Menhub-II/2009 as being incompatible with indigenous people's rights

because they appear to "deny any proprietary rights to indigenous peoples in forests." (CERD 2009). On the one hand because of the definition of Customary Forests (see 4.1.1) on the other hand BFL states that "The Government shall stipulate the status of forest ... and indigenous forest shall be stipulated if any and its existence acknowledged." (RoI (1999), Article 5 (3)) The law thus ensures that the Government decides whether indigenous peoples exist or not, a situation that allows the presence of indigenous peoples to be denied when expedient for the government and denies the right of self-determination from Indonesia's indigenous peoples. However, Gol appears to be ignoring the Committee's concluding observations and recommendations. Not only has it not taken any visible steps towards giving effect to these recommendations, but even continues to issue additional permits for resource extraction and plantation concessions at the expense of indigenous peoples and in direct contravention of its obligations. (SAWIT WATCH & AMAN (2009b), p. 2)

4.3.3.3 Strategy papers

IFCA

The NGO DOWN TO EARTH INDONESIA (DTE) criticises that the IFCA Report is very weak on rights recognition (DTE (2008), p. 10). General formulations, such as that "more can be done to clarify and recognise customary rights and to resolve competing claims" (MoFOR (2008), p. 141) and that there is a "need to clarify roles and responsibilities for REDD implementation" (MoFOR (2008), p. 154), without details of how to address these issues are concerning DOWN TO EARTH INDONESIA about how Gol will further proceed with regards to indigenous people and their customary rights in REDD. The IFCA Report did not dispel the CSOs' concerns but confirms the expected weakness in addressing customary tenure rights.

UN-REDD Programme

Even though the UN-REDD document makes explicit reference to issues such as the right of FPIC, it is still lacking in operational terms and complaint mechanisms which are envisaged to be developed at a later stage (GRIFFITH & MARTONE (2009), p. 47). Without proper safeguards and measures to protect peoples' rights, CSOs warn that the UN "is paving the way for a massive land grab" on a global scale. Other critics point out that the UN's current plans do not contain clear measures to address social risks of REDD policies (GRIFFITH & MARTONE (2009), p. 47).

While the UN-REDD Programme is commended for adopting a rights-based approach to REDD within the donor community, civil society organisations are concerned that the relevant UN agencies do not have binding policies, or if they do possess such policies, the mechanisms for their application are weak (GRIFFITH & MARTONE (2009), p. 47). Critics point

out that UNEP is still developing its policy on indigenous peoples and that the FAO does not have such a policy. Additionally the CSOs are sceptical about how the forestry department's approach will mesh with the UN-REDD's pro-rights approach and whether the guiding principles of the UN-REDD framework document, including a human rights-based approach with particular reference to indigenous peoples' issues, will be explicitly included in the "quick start" work with Indonesia. The warning of UN-REDD in their framework document that "if REDD programmes are not carefully designed, they could marginalise the landless and those with informal usufructual rights and communal use rights" is, according to the CSOs a warning that could have been tailor-made for Indonesia (DTE (2008), p. 10). The CSOs are alerted that despite this acknowledgement made by the UN-REDD Programme, these issues are not addressed in the Indonesian JPD.

FCPF's R-Plan

AMAN and SAWIT WATCH have written to the Minister of Forestry pointing to the lack of proper consultation and to the lack of reference to international legal standards and obligations with which the Indonesian government should be compliant (AMAN & SAWIT WATCH (2009b)). Given the state of national laws and regulations in Indonesia and the lack of effective protection for the rights of indigenous peoples therein, the two organisations stated their surprise to read in the R-Plan that "[t]he government has made extensive efforts to accommodate community rights in forest management through forestry regulations and laws." (R-PLAN (2009), p. 3) (SAWIT WATCH & AMAN (2009b), p. 3) It is unclear to AMAN and SAWIT WATCH which laws and regulations are being referred to in the R-Plan. Therefore they demand guidance from GoI on the steps that have been taken to provide for and protect indigenous peoples' rights in existing and proposed laws and regulations (SAWIT WATCH & AMAN (2009b), p. 3).

The fact that the REDD process and especially the drafting of the R-Plan lacked proper consultation and reference to international legal standards and obligations with which the Indonesian government should be compliant, is especially worrying as CERD ruled in March 2009 that the Indonesian government should respect international legal standards related to indigenous peoples' rights. (CERD (03/13/2009)) AMAN & SAWIT WATCH also criticise the vague statements in the R-Plan that indigenous peoples "will play an enormously important role" and that "[their a]dequate involvement in the implementation of programmes is key, but also addressing their needs in future public policies will be important." (R-PLAN (2009), p. 3) The two organisations argue that these are bare statements without mentioning further actions to realise them. In addition, Table 1 (R-PLAN (2009), p. 13) which lists REDD

stakeholder communications in 2008, does not mention the involvement of indigenous peoples at all.

The process of development and discussion of Indonesia's R-Plans does not demonstrate transparency, quality and accountability. This might in fact, violate the World Bank's own safeguard policies, as well as internationally relevant legal standards and obligations such as those contained in the UNDRIP and in the right to FPIC. (GRIFFITH & MARTONE (2009), p. 44) That no formal explanation is given on how FCPF intends to ensure the proper fulfilment of Charter requirements, especially regarding safeguards and respect for the rights of indigenous peoples is also questioned by several Indonesian CSOs (CSOs INDONESIA (2010), p. 2). In their opinion, this suggests a serious compliance gap. They request that the FCPF must comply with the highest standards, as any weakening of the policies, guidelines, procedures and safeguards for REDD would significantly undermine the credibility of FCPF. (CSOs INDONESIA (2010), p. 2)

4.3.4 Requests

Indonesian CSOs have stressed that to be sustainable, REDD policies must address the full spectrum of land, natural resource and human rights issues (GRIFFITH & MARTONE (2009), p. 54). Besides clarified carbon rights, the CSOs demand clear rights relating to trees and land rights (FPP (2009), p. 7). Community and indigenous leaders in Indonesia maintain that the UN-REDD Programme must support Indonesia to adopt a rights-based approach that empowers indigenous peoples and forest dwellers and ensures they are involved in the formulation of national and local REDD policies and programmes (GRIFFITH & MARTONE (2009), p. 54).

The CSOs reject a "business as usual" approach to REDD in Indonesia and demand reforms that recognise customary rights, clarify tenure rights, promote community-based forest management and increase community control over forests (GRIFFITH & MARTONE (2009), p. 54). According to ABDON NABABAN, AMAN secretary-general, addressing inequalities in land tenure, discrimination against indigenous peoples, corruption, over-consumption and uncontrolled industrialisation will tackle the underlying causes of deforestation. He further requests that customary forest management be increased, as examples from all over the world show that this is a long-term solution in safeguarding and ensuring sustainability.¹⁴

¹⁴ Nababan (2008) Keynote Speech: Inclusive Climate Change Solutions, Presentation made by the Secretary General of AMAN, Indonesia to the Global Forest Leaders Forum, Preston Auditorium, World Bank, Washington, DC, 17 September 2008.

WALHI states that it is vital to tackle governance reform and appropriate law enforcement in Indonesia's forestry sector in order to adequately address the current unsustainable rate of deforestation (FOEI (2008), p. 13). This is supported by an international forum of Global Forests Leaders at the World Bank in Washington, whose statement "Beyond REDD"¹⁵ outlines what kind of problems need to be tackled to reform the way forests are managed in Indonesia. They urge a cross-sectoral approach to forests, recognition of forest peoples' rights, appreciation of the multiple values of forests, reformed forest governance and the provision of incentives to avoid deforestation, not just the reduction of emissions by slowing deforestation. (TFD (2008))

As the implementation of REDD prior to addressing these concerns could potentially be disastrous in the opinion of the CSOs, they demand that the pace of REDD negotiations and of the implementation of demonstration activities be slowed. Together with a moratorium on logging, this would allow important reforms to take place which need to address governance and customary land tenure issues (FOEI (2008), p. 13). *Adat* forests should not be seen as a sub-category of state forests any longer.

WALHI also advocates community based sustainable forest management that formalises traditional knowledge systems and land management practices (FOEI (2008), p. 13). Community based forest management, with appropriate recognition of customary land tenure and collective rights will prevent deforestation and promote effective long-term forest conservation. Secure land tenure has repeatedly been shown to reduce the pressure for deforestation and to promote sustainable use of forest resources while simultaneously contributing to local livelihoods and biodiversity (FOEI (2008), p. 13).

The Indonesian CSOs request that the State remedies the massive and ongoing rights violations occurring in existing oil palm plantations and that these patterns from the past should not be repeated with REDD. They further demand that Indonesia adopts legislative, administrative and other measures to give full effect to the rights of indigenous peoples, including the amendment of existing laws and that it does so with indigenous peoples full and free participation through their own freely chosen representatives (CSOs INDONESIA (2007), p. 3).

¹⁵ This statement is the product of a multi-stakeholder process developed and convened by The Forests Dialogue. It expresses the consensus view of more than 250 people from diverse backgrounds, who came together in various forums to debate, over a ten-month period, the role of forests in climate change and the policies being developed to foster that role. The process culminated in the Global Forest Leaders Forum in Washington, DC, United States on 17–18 September 2008. The Forum was attended by leaders of environmental and social groups, businesses, Indigenous Peoples' and forest community groups, trade unions, forest owners, governments, and international organisations.

In addition the Indonesian government needs to provide more in-depth understanding and information about REDD to local communities and indigenous peoples, as the regional consultations held to date are insufficient to achieve a real understanding of REDD activities across the country (FOREST WATCH INDONESIA (2009), p. 4). Training and capacity building prior to public consultation are important to ensure that local people are properly informed. Currently they are mostly poorly informed about their rights and the consequences of projects (FPP (2009), p. 7).

4.4 Case study conclusion

The assessment of tenure issues in the REDD context in Indonesia from the point of view of the government differs widely from that of the civil society. Past experiences of customary rights' violations, together with GoI's current approach towards REDD with little involvement of forest-dependent communities in the negotiation process and ignorance towards their concerns and proposals leave little optimism. Civil society's concerns do not seem to be unjustified under these circumstances.

GoI's REDD proposals do not adequately consider fundamental issues of forest governance, including tenure issues, which underpin D&D problems. The documents contain no clear commitments to address rights and equity issues in a far-reaching way, such as a forest tenure reform. Even though critical points like governance and tenure issues have been addressed to some extent in most of the analysed documents, none of them focuses on governance or tenure issues, but rather on technical issues or participation and awareness raising in the case of UN-REDD. The addressing of the governance and tenure issues is disproportionate compared with technical issues. They are only briefly dealt with and are not handled beyond problem elaboration. Any further steps or mechanisms on how to address or possibly solve them are not provided. There needs to be more emphasis on governance and tenure issues, which with regard to REDD, are important for its successful implementation and permanence. The key challenge confronting Indonesia is to design REDD to support the needs of local communities and citizens in a sustainable way (DAVIET ET AL. (2009), p. 8).

Despite great strides made in transparency and democratisation in recent years, discrimination against indigenous peoples in Indonesia remains pervasive and institutionalised (CSOs Indonesia (2007), p. 4). GoI does not seem to prioritise the avoidance of further violations of customary rights and of increasing land conflicts, given the inadequate addressing of governance and tenure issues. To succeed in sustainable forest management and protection in the long-term, it is important to win the confidence of the local communities who mistrust the large-scale projects which took place very often at their expense in the past.

Also the donor's approach and their attitude towards the elaboration of the respective strategy papers are disappointing. Although most donor initiatives have requirements for public participation, they only recommend voluntary or optional guidance on human rights and governance (GRIFFITH & MARTONE (2009), p. 36). They do not demand enough effort to ensure that REDD is conducted under good forest governance principles and these initiatives may end up accepting the *status quo* in the forest sector with discriminatory and unsustainable practices (GRIFFITH & MARTONE (2009), p. 36). It is unsatisfying that the FCPF and the UN-REDD Programme support "readiness activities" and pilot REDD payment mechanisms, but would not provide underlying finance to implement the actual reforms and investments needed on the ground (GRIFFITH & MARTONE (2009), p. 45).

Considering the difficult tenure situation in Indonesia, it should be mandatory to review and harmonise existing laws regulating land, forest and other natural resources as advocated by TAP MPR IX/2001 prior to REDD's final implementation, so as to ensure that the financial support is channelled towards sustainable forest management which benefits more than only a small elite. Clear authority, responsibilities and effective control mechanisms have to be established, as well as clear rights for land, forest and carbon to stop the high rates of D&D. Even though it is not easy to change and improve forest governance because there are many vested interests in maintaining the *status quo*, it is very important to seriously tackle these issues. Strengthening forest governance will require strong and fair rules, rights, and institutions at all administrative levels as well as civil society participation. Without addressing governance and tenure issues it will be difficult, if not impossible, to reduce D&D at the national level (DAVIET ET AL. (2009), p. 8) and local communities are likely to be affected negatively. A win-win solution could be reached with clarified and secured tenure for the resource protection as well as for the local livelihoods, poverty alleviation and political stability. For the sake of the global climate and also of the Indonesian society and the many functions of forests (livelihoods of millions of forest-dependent communities, biodiversity, quality watersheds, protection from erosion), the remaining Indonesian forests must be protected.

5. Conclusion & recommendations for development cooperation

As REDD is not yet fully implemented, with first demonstration activities taking place at the moment, a comprehensive evaluation of REDD's implications on land and forest tenure is not possible at present. The implications will depend on the existing institutional and governance frameworks.

Besides moral and human rights aspects, tenure rights should also be clarified and recognised for economic and effectiveness reasons. On the one hand they minimise risk and transaction costs, on the other hand REDD will not work without a solid institutional base and community engagement. Given the importance of tenure for sustainable management and for the protection of natural resources, as well as for the livelihoods of local communities, the governments and the involved funding organisations should endeavour to clarify land claims and secure tenure in order to minimise the negative impacts and to increase the positive impacts of REDD.

Governments should address governance and tenure issues prior to REDD implementation, even though this includes extensive processes which are time-consuming, complex and need a lot of capacity building. However past experiences with conservation projects and forest protection have shown that approaches which do not address the underlying causes of resource exploitation and degradation, which are often linked to governance and tenure issues, are often ineffective. Good forest governance needs to be an integral part of all REDD projects as the quality of governance is known to have effects on deforestation, together with other social and economic factors. To succeed in reducing rates of D&D and their emissions in the long-term, will require capacity-building and institutional and legal reforms which allow for protection and sustainable management of natural resources and the involvement of local communities.

With regard to reforms, all relevant stakeholders should be involved in defining the existing problems and negotiating a solution. Public discussion can help to generate support for the reforms and to foster a sense of collective responsibility.

Governance reform:

Governance reforms aim for operations of the government and the public sector to be effective, transparent and accountable. Furthermore an independent judiciary is needed that enforces the law impartially and upholds the rule of law. Forest-dependent communities often lack access to justice and protection under the rule of law, which leads to conflict, repression and further abuse. Citizens should have equal protection under the law. Regulations and

laws and their enforcement should be clear and consistent. With regard to forests it is important to strengthen the capacity of government staff and communities involved in management of forest areas. Forest management permits, including those related to REDD need to be allocated in a transparent and public way to tackle corruption and illegal activities, such as illegal logging.

Institutional reform:

Strong institutions are needed to enable the protection of natural resources and to ensure that REDD funds are channelled according to their specific purpose and in an equitable and fair way. Institutions may be considered successful and strong when they are efficient, consistent and enforced and widely accepted as legitimate. The creation of clear rules and responsibilities is only one part of institutional reform. The capacity to implement and the will and the means to enforce these rules are also crucial. All institutions have to be compatible within a wider institutional framework. Contradictions in legislation result in wide gaps between the written law and its implementation on the ground (as seen in the Indonesian case). Contradicting and overlapping legislation needs to be revised and harmonised.

Tenure reform:

Given the possible implications of REDD on local tenure systems, tenure reforms are especially important. While specific policy developments must be tailored to local contexts, some general recommendations for tenure reforms can be given:

- Reforms should be transparent and made in consultation with forest-dependent communities as they are more likely to succeed and benefit the poor with the full participation of forest communities.
- Governments need to review all land- and forest-related laws to identify weaknesses such as contradictions, overlaps and insufficient coordination between them. Resolving ambiguity in legal provisions as well as in tenure arrangements and removing administrative obstacles and overlapping responsibility in the forest sector are the first steps towards protecting the resources. A clear legal framework for forest tenure rights is essential for resolving uncertainties and disputes around access to forest resources. Governments should establish, strengthen and support effective mechanisms and institutions of regulation over land and resource use.

- Governments have to implement adequate measures to recognise and protect the customary rights of local communities, including indigenous peoples, as set out in the UN Declaration on the Rights of Indigenous Peoples, in national legislation.¹⁶
- Customary rights to land, forests and also to carbon need to be clarified, strengthened and enforced. Carbon rights have to be established effectively in national regulations and linked to land tenure as local tenure security is at risk where carbon rights are separated from land tenure. Unclear carbon, land and forest rights could potentially be exploited at the expense of local benefit.
- Logistical and financial hurdles faced by people to register their rights or to obtain official title need to be removed. Productive land use requirements need to be addressed where these undermine sustainable forest management and alternative mechanisms to secure land claims have to be found.
- Forestry departments and national legislatures need to invest sufficient time and resources into recognising land claims, clarifying existing forest tenure systems (statutory and de facto rights) and resolving land conflicts through effective mechanisms and institutions. Governments should support community mapping and related social processes for negotiating and identifying local rights of ownership, access, management and use in forest areas. Addressing land and resource disputes and creating tenure security for all stakeholders can resolve violent conflicts and create incentives for investments, thus contributing to economic growth and an enabling environment for sustainable resource management.
- Local communities must be given remedies for the violation of their customary rights and redress for and the restitution of illegally expropriated properties. Independent reviews of claims of dispossession need to be supported.
- National governments still claim ownership of most of the world forest area. There has been a change towards less government control, but progress has been slow and largely concentrated in a small number of countries. There is a need to support community forestry to encourage sustainable forest management. Governments should increase the allocation of community forestry leases or (collective) land titles and prioritise ownership rights over mere access rights.

¹⁶ This includes the recognition of indigenous peoples' right to own their territories and ancestral domains and hold and manage their lands according to their own forms of tenure. Furthermore the right to represent themselves through their own institutions and to give or withhold their free, prior, and informed consent to activities or actions that may affect their lands. Overall they should be given protection of their basic rights and freedoms.

- There continues to be a lack of adequate information on tenure claims, conflict and ownership in the forest areas of most countries. Therefore full information has to be made publicly available about ownership and control of forest resources. Forestry departments need to improve tenure data collection, documentation and basic census data of numbers of forest residents.
- To improve tenure reform performance, local communities must be well informed of tenure policies and legislation and of their own rights and responsibilities within this framework. Capacity building within communities is crucial to ensure they understand new legislation and have the confidence and ability to assert their right to full participation in the control of land and resources in their communities.

Recommendations with regard to local communities in REDD:

- Besides these reforms it is important to involve local communities in REDD activities from design to implementation. Significantly, this has not been the case to date in ongoing REDD negotiations in many countries. An increased participation is needed to ensure local communities are informed and have a voice in deciding what happens with the forests they depend on, to give them a stake in decision-making and to address local needs and tenure arrangements. Local priorities need to be better fed into ongoing negotiations for an international agreement on REDD, for instance, vital safeguards for local resource rights and effective complaint mechanisms. REDD is likely not to work unless it is locally credible. The right of indigenous peoples to give or withhold their consent to REDD policies or proposals which may affect their rights, lands and resources or their interests in general must be fully respected. It is important that policy dialogues between government, investors, donors and local communities take place and that every stakeholder has access to full and transparent information. This includes information for local people about how REDD works and what it might mean for their communities and on bargaining with possible investors or funders.
- It is important that local communities are given a chance to participate in and benefit from REDD activities. Logistical and financial obstacles to participate in REDD activities (e.g. the preparation of complex management plans) have to be removed. Effective arrangements to channel benefits to the local level have to be developed and independent complaint mechanisms have to be established. These arrangements are critical due to the risk of elite capture, lack of transparency and of accountability in some countries.

Recommendations for development cooperation in REDD:

- Socio-economic impacts of REDD should be analysed prior to implementation to minimise negative consequences for the livelihoods of local people. Projects of development cooperation should support a rights-based and pro-poor approach of REDD and should ensure that local communities share full and transparent information and are involved in REDD activities.
- Capacity building and training of government members and communities involved in forest management is important to encourage sustainable management and protection of forest resources.
- Learning groups linked to REDD approaches will be critical, potentially enabling country-specific exchange with all relevant stakeholders about best practices and failures and channels for cross-country alliance-building and lesson-sharing.
- One of the most important aspects which should be taken into account for REDD projects is the analysis, evaluation, inventory and characterisation of land tenure systems as part of understanding the underlying causes of deforestation. The project should respect local concepts of land and natural resource ownership. Government agencies and local institutions which have spatial control or authority should be identified and involved in project activities. It is necessary to identify the different parties which have a stake in land tenure issues and include them in the project framework. By these means, it can be ensured that project design is sustained on regional and local consensus rather than imposed from outside.
- Initiatives to develop REDD should be shaped to contribute to broader efforts to improve forest governance. Ignoring governance and tenure issues and channelling substantial resources into technocratic and short-term approaches to REDD will not ensure effective management and sustainable use of natural resources in the long-term. Short-term approaches will be an obstacle to establishing strong local tenure and accountable stewardship of forest resources. REDD can only succeed in the long-term if these issues are addressed and supported by strong institutions. Only then can the underlying causes of deforestation be tackled.
- Where necessary, legislative and policy reforms need to be supported to strengthen tenure, social and environmental standards and participation in decision-making and to ensure that forest management provides co-benefits for local people. The respective governments should be consulted on the basis of lessons learned and best practices.
- Projects of development cooperation which support good governance urgently have to be linked to projects which are involved in the implementation process of REDD and they need to address tenure issues. This will increase the probability of the successful

implementation of REDD projects and their permanence, as well as of improved conditions which also benefit the poor. They should support and consult governments to determine strategies and mechanisms to address governance and tenure issues for their national REDD strategies. If these issues are not addressed, the (social) costs that will follow from aggravated conflicts and further D&D, with consequential emissions, will be immense. This will have significant impact, not only on climate change but also on poverty alleviation, food security and the attaining of the Millennium Development Goals (MDGs).

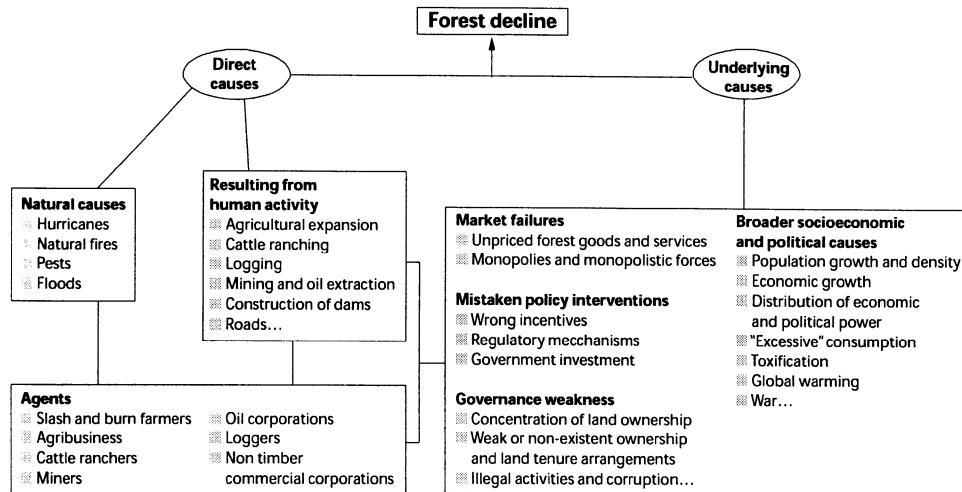
Annexes

Annex 1: Forest tenure distribution in potential REDD countries in 2008 (all figures expressed in millions of hectares) (adapted from SUNDERLIN ET AL. (2008b), p. 8)

Country	Public		Private	
	Administered by government	Designated for use by communities and indigenous peoples	Owned by communities and indigenous peoples	Owned by individuals and firms
Angola	59.10	0.00	0.00	0.00
Bolivia	22.88	19.52	9.04	1.10
Cameroon	20.11	1.14	0.00	0.00
Central African Republic (CAR)	22.76	0.00	0.00	0.00
Colombia	33.23	0.00	27.50	0.00
Congo	22.01	0.46	0.00	0.00
Democratic Republic of the Congo (DRC)	133.61	0.00	0.00	0.00
Gabon	21.76	0.00	0.00	0.00
India	49.48	17.00	0.00	1.07
Indonesia	121.89	0.23	0.00	1.71
Mozambique	17.26	0.00	2.00	0.00
Myanmar	32.18	0.04	0.00	0.00
Peru	42.34	2.86	12.62	5.29
Sudan	64.68	2.82	0.00	0.05
Tanzania	31.79	1.58	2.05	0.06
Venezuela	47.70	0.00	0.00	0.00
Zambia	42.44	0.10	0.00	0.00

Annex 2: The causes of forest decline

(adapted from CONTRERAS-HERMOSILLA (2000), p. 5)



Annex 3: Distribution of revenues according to forest category

(adapted from Roi (2009b))

Permit holder / developer	Distribution		
	Government	Community	Developer
IUPHHK-HA (Wood Use License for Natural Forest)	20%	20%	60%
IUPHHK-HT (Wood Use License for Plantation Forest)	20%	20%	60%
IUPHHK-RE (Wood Use License for Ecosystem Restoration Area)	20%	20%	60%
IUPHHK-HTR (Wood Use License for People's Plantation Forest)	20%	50%	30%
Hutan Rakyat (People's Forest)	10%	70%	20%
Hutan Kemasyarakatan (Community Forest)	20%	50%	30%
Hutan Adat (Customary Forest)	10%	70%	20%
Hutan Desa (Village Forest)	20%	50%	30%
KPH (Forest Management Unit)	30%	20%	50%
KHDTK (special purpose forest area)	50%	20%	30%
Hutan Lindung (Protection Forest)	50%	20%	30%

Annex 4: Successful HKm example in Sumberjaya

SUYANTO ET AL. provide a successful example from Sumberjaya in the Lampung Province of Sumatra, where conditional land tenure is provided to farmers by HKm permits, if they contribute to watershed health by using appropriate coffee management practices and if they protect remaining areas of natural forest (SUYANTO ET AL. (2007), p. 3). Besides the granting of conditional land tenure, farmers are also paid a reward for reducing sediments. The World Agroforestry Centre (ICRAF) leads the so called RUPES (Rewarding Upland Poor for Environmental Services) project in collaboration with local government officers, a local NGO and farmers groups. When the project first started work in 2004 implementation difficulties existed. A decade ago there were many conflicts in the area. Forced eviction of farmers caused a poor relationship between local people and government officials (SUYANTO ET AL. (2006), p. 2). Additionally the government was slow to embrace the programme, apparently due to concerns about whether farmers could be trusted to fulfil their part of the agreement. Only five farmer groups had been awarded permits on an area of seven per cent of the protection forest, which was too small to bring measurable improvements to the watersheds. A series of workshops were held with district, provincial and national level officials, which helped ease officials' scepticism. (KERR ET AL. (2008), p. 4) ICRAF ensured communication between all stakeholders and created goodwill among government agents. Its research shows that without a trusted partner, local people have great difficulty in forming relationships with government agencies. In July 2006, all 18 participating farmer groups received community forestry permits, covering 70% of the respective forest by conditional land use permits.

Besides increasing watershed quality, the conditional forestry permits have demonstrated improvements for the farmers (SUYANTO ET AL. (2006), p. 3). A study conducted by RUPES, together with researchers from Michigan State University and the International Food Policy Research Institute (IFPRI) found that the community forestry permits:

- increased land tenure security,
- double the local land value,
- reduced corruption,
- increased income by about 30%, mostly due to reduction of bribes,
- increased equity, relative to the in-village resources farmers have,
- promoted tree planting/agroforestry,
- promoted soil and water conservation, and
- gave farmers incentives to protect remaining natural forest (SUYANTO ET AL. (2006), p. 3).

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Erklärung

Hiermit erkläre ich, dass ich meine Masterarbeit zur Erlangung des Grades Master of Arts (M.A.) mit dem Thema:

“Possible implications of REDD on land and forest tenure – exemplified by the Indonesian case”

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