

Forest carbon rights and corruption: What donors can do to minimize the risks

Assigning forest carbon rights is crucial for any effective REDD+ system. Often linked to debates about forest tenure, carbon rights determine who can make decisions about REDD+, who can benefit, how and to whom the carbon is sold, and under what circumstances. Debates about forest carbon rights are strongly linked to debates about equity in REDD+. Clear and secure forest carbon rights are also important for encouraging reputable private investment into REDD+.



Forest carbon rights regimes may be undermined by corruption or related crimes such as embezzlement. Reports abound of ‘carbon cowboys’ fraudulently acquiring community forest carbon rights (Lang, 2012) and government officials corruptly awarding forest carbon credits to private traders (Grindneff, 2009). Few criminal prosecutions of corruption concerning forest carbon rights have been launched, yet early examples show the many risks of corruption to assigning and maintaining such rights. This U4 Brief outlines some of the key risks of corruption in different carbon rights regimes. While there has been a focus on issues of equity in assigning carbon rights (and reforming forest tenure more broadly) the focus of this brief is narrow. It discusses only different carbon rights regimes that may evolve and analyses the risks for corruption in assigning and maintaining carbon rights.

Current approaches to assigning forest carbon rights

‘Carbon rights’ are a specific set of legal rights that ‘describe the right to exploit the carbon benefits of an activity... its emission reduction or sequestration potential’ (Streck, 2009). Few countries have established legal forest carbon rights, with Mexico and Guatemala as exceptions (Rights and Resources Initiative, 2014). Forest carbon rights are likely to evolve from existing rights and legal systems

in REDD+ countries and in many cases, regulations already exist that could provide a legal basis for REDD+ (Rights and Resources Initiative, 2014). This means existing forest tenure, which determines factors such as ownership, excludability and the right to use different resources at different times, provides a likely basis for both the ownership and use of forest carbon rights. Existing land and forest tenure rights will also be influenced by the implementation of those carbon rights. While the ‘right to exploit the carbon benefits of an activity’ may be held by the state, that right will affect and be affected by the activities of other actors, such as logging firms or forest-dependent peoples, who hold use or ownership rights over different aspects of forest resources. Harmonizing the different rights is complex, particularly if issues of equity and justice are considered, and few countries have yet to formalize arrangements. But clear allocation, including the recognition of rights holders and, where necessary, the titling of such rights, is key to the successful implementation of REDD+.

Given that forest carbon rights tend to resemble existing patterns of forest rights, in many parts of the world, forest carbon rights systems will be based on state ownership. Unless significant tenure reforms take place, states will retain the right to benefit from (either by sale of carbon or through carbon funds) any emissions savings. States may implement activities, for example by improving national park systems to benefit from the carbon emissions savings. More commonly, the state may award licenses to other actors who will gain the right to benefit from any REDD+ activities they implement in that area. For example, the Indonesian government has established an ‘ecosystem restoration permit’. Under this permit, the developer gains the rights to implement activities in the permitted area and can trade or sell resulting carbon benefits to third parties (Hartono, 2013). States may implement policies to change the behaviour of other actors and claim the carbon benefit. In such instances, systems for distributing benefits will be needed to offset opportunity costs for other rights holders.

There has been a strong focus on regulations surrounding benefit distribution (Corbera et al., 2011; Mahanty et al., 2013; Streck, 2009). This involves identifying who are the existing rights holders (such as concession holders or customary communities), how their (ownership or use) rights (de jure and de facto) may be affected by any REDD+ intervention and then either compensating them for any losses, or providing other incentives for improved carbon outcomes. Many countries have existing regulations that support distribution of benefits from other forest products, such as Kenya's Forests Rules, however, these will need to be adjusted and improved for REDD+ projects (NortonRose, 2010).

Another push internationally is towards securing forest carbon rights for forest communities. Assigning forest carbon rights to customary communities, through titling, is linked to broader forest tenure reform, and appears necessary to ensure community rights to informed consent or effective participation are protected (Rights and Resources Initiative, 2014; Sunderlin et al., 2014). In some countries, customary rights may be the dominant form of forest carbon rights, (Papua New Guinea or Ghana), in others, customary or community rights may only apply in specific regions (Nepal or Peru).

If forest carbon rights are assigned to communities, REDD+ implementation will need to identify and legally recognize specific customary authority. It must clarify (where possible) what the specific customary rights may be (for example, who has access to what sort of forest product, at what time). In addition, systems will be needed to ensure that those customary owners directly benefit (either via cash or in-kind payments).

Corruption risks

Corruption here is defined as the abuse of entrusted power for private gain. Experience with actual cases of corruption in the assigning and management of carbon rights are limited, so this analysis is supplemented with experience with corruption in broader forest tenure, and an assessment of risk factors. It is also important to note that carbon rights do not exist in a vacuum: without broader governance standards for REDD+, the corruption risks may be higher.

As many forest carbon rights regimes will be modelled off existing forest rights, some corruption risks will be similar. The risks of bribes being paid to government officials to award licenses for REDD+ projects may be similar to the bribes associated with licenses for logging concessions. There have already been media reports of government officials corruptly allocating forest carbon credits to private

companies (Grindneff, 2009). This occurred because there was a lack of regulation surrounding the allocation of carbon rights, and a lack of understanding by communities, so the government officials pre-emptively awarded licenses. But the unproven profitability of REDD+ intrinsically limits this risk and there is little expectation that corruption associated with REDD+ licensing will have any effect on broader land-use plans.

The greater corruption risks surround benefit-sharing arrangements. Experience with other forest-related funds highlights the many risks of corruption when state agencies collect and manage forest funds (Barr et al. 2009). There are also risks concerning decision-making about which rights holders are identified and will need to be compensated. Once funds have been allocated to different actors (including customary rights holders) there are also many risks of

corruption and embezzlement in the actual distribution of funds between different agencies and to local communities. A history of problems in transferring benefits in Tanzania's forest sector is considered a key policy challenge for REDD+ there (Burgess et al, 2010). There are also risks associated with the use of funds to support politically motivated or private projects (Barr et al. 2009).

These risks arise from a lack of transparency, lack of public consultation about distribution mechanisms and lack of appropriate financial management. This is particularly the case for local communities engaged in REDD+ because unlike timber—where communities may be able to see the amount of timber harvested and estimate their share of benefits—lack

of understanding about carbon and its market price means there is considerable information asymmetry. This reduces communities' capacity to monitor and identify corruption or embezzlement in the distribution of benefits.

When forest carbon rights are assigned to communities, there are additional risks associated with identifying who the rights holders are and distributing money (or in kind payments) to those rights holders. These risks increase with scale. Other factors such as remoteness, literacy levels, and access to banking infrastructure may also increase the risks. There are general risks of corruption and fraud when identifying customary forest rights holders. This is because unclear or fluid customary ownership of land may make identification of full customary rights holders difficult and costly. There are incentives and opportunity for individuals to fraudulently claim to be a customary rights holder or to claim to represent those customary rights holders (see ODI, 2007).

There are also risks of embezzlement and the corrupt use of proceeds of any REDD+ project, as seen in countries

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where communities receive direct payments for other forest products. In Papua New Guinea for example, customary communities receive direct royalties from logging in their area. But there are many reported instances of embezzlement – for example when in-town representatives who are tasked with collecting the money, steal it—and corruption in the distribution and management of these royalties—for example when the people tasked with managing community funds direct the use of those funds towards the interests of certain people, in exchange for private benefits paid by those people (Forest Revenue Review Team, 2002). These risks are exacerbated by geographic and communication remoteness: when local communities have little idea of how much money is being transferred, when and how it is being used, and little capacity to prosecute any abuses. There are few legal mechanisms for external agents to monitor activities of community elites.

Finally, there are also risks when forest carbon rights are transferred between actors. So-called ‘carbon cowboys’ have been reported in many countries to fraudulently or corruptly acquire the carbon rights of communities (Lang, 2012).

Key anti-corruption considerations

Some anti-corruption reforms require broader societal shifts that are beyond the scope of REDD+ activities and therefore not addressed in this brief (Tacconi et al. 2009). In relation to carbon rights, some key corruption risk factors may only be evident once the detailed regulations surrounding forest carbon rights and REDD+ are formalized. This will mean there is a need for donors to support wide consultation with in-country participants in forming REDD+ regulations. This will reduce the potential for capture in the decision-making surrounding how forest carbon rights are allocated. Considerable donor support (including international political will and transfer of technical knowledge) will also be necessary to encourage REDD+ countries to include conditions that reduce the opportunity for corruption.

For a summary of potential anti-corruption responses see the table at: <http://bit.ly/1AvDgtr>

Rights held by states

Given forest carbon rights are expected to be predominantly held by states, lessons can be learned from programmes aimed at reducing corruption in timber licensing and land allocation. This includes efforts to ensure public reporting of carbon concession licenses and in the future public tendering/auctioning for such licenses. Until there is more competition for REDD+ licenses, auctions may not be feasible, but support for public reporting about existing licensees is important.

If carbon rights are assigned to states, anti-corruption efforts should focus on procedures for benefit distribution, particularly for communities whose existing rights may not be legally recognized. Knowledge gaps continue about how such rights will be affected by any specific REDD+ intervention. Donors need to be aware of the risk of capture of decision-making and how that may result in a failure to recognize customary rights, and failure to include such rights holders in any distribution mechanism. Extensive study of how REDD+ interventions affect a wide variety of stakeholders is still necessary. Furthermore, donors need to encourage governments to identify and make use of such studies to ensure that no capture exists.

Clear procedures for managing forest carbon funds and distributing them to relevant rights holders will be vital to reduce many corruption risks. Traditional anti-corruption tools—such as ensuring carbon funds are kept separate from other funds (to protect them from co-mingling and establish conditions for performance-linkage) and are publically reported—will be necessary.

Rights held by communities

One of the main knowledge gaps and areas for donor attention concerns the risks of assigning forest carbon rights to communities, particularly if this is done over a large-scale or in remote areas. Donors will need to ensure there is sufficient funding to support the administration of legalizing community ownership and maintaining carbon rights to communities, as well as the logistics of transferring funds to those communities. This is particularly the case when carbon ownership is complicated (such as when customary practices which determine inheritance and user rights are varied and boundaries between customary lands are fluid) or communities are very remote.

Clear management of carbon funds must be accompanied by education campaigns, such as the US State Department’s Widening Informed Stakeholder Engagement for REDD+ surrounding carbon pricing for community groups and civil society. These campaigns need to provide sustained and independent information for communities and civil society who are currently or potentially engaged in REDD+ projects.

Finally, there are policy challenges to transferring rights between actors, particularly from communities to developers. Donors and REDD+ project proponents will need to ensure procedures are in place to support the informed decision making of those community rights-holders. This could be accompanied by efforts to inform buyers of carbon credits about the security and legality of credits when they are subject to such a transfer.

A history of problems in transferring benefits in Tanzania's forest sector is considered a key policy challenge for REDD+ there



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Conclusion

As specific forest carbon rights regulations are formed and REDD+ projects implemented, there will be a need for ongoing assessment of risks and ongoing support for programmes to prevent corruption. Donors or project proponents need to be aware of the variety of different forms of corruption and other crimes, including capture and embezzlement, and plan accordingly. Given the limited

knowledge of many communities about carbon, REDD+ and forest carbon rights, attention will need to be paid to supporting and educating communities to ensure they can hold other actors to account. Finally, if forest carbon rights are assigned to communities particularly, donors will have to ensure there is sufficient support for administration and logistical aspects of recognizing rights and distributing benefits.

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