

USING INTERNATIONAL LAW TO ADVANCE WOMEN'S TENURE RIGHTS IN REDD+

A Summary¹



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Reducing Emissions from Deforestation and Forest Degradation (REDD+) is a voluntary international initiative to reduce greenhouse gas emissions from deforestation and forest degradation and to promote conservation and sustainable management of forests. It has significant implications for tenure rights, including for women. Although women use forests to support their own as well as their families' livelihoods, they are frequently overlooked as key stakeholders. Women often face discrimination in resource management processes, largely through unequal, insecure, or unclear tenure rights. Hence, there is a significant risk that the implementation of REDD+ could exacerbate existing inequalities for women. Securing women's tenure rights is fundamental, as tenure rights provide recognized rights-holders with the ability to be involved in and to benefit from the design and implementation of REDD+ activities.

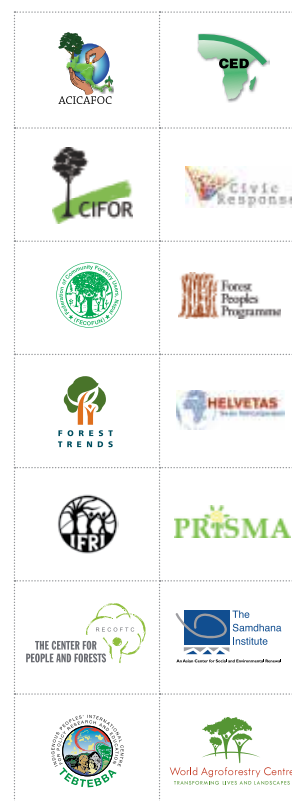
In international law, and also in REDD+ frameworks, there is no specific treatment of women's tenure rights. However, women's rights and gender equality are enshrined in various international agreements and commitments. This creates entitlements for women as rights holders. It also creates duties for States, which could include making changes to legal frameworks, institutions, political decision-making structures, attitudes, and relationships to support the realization of women's rights—including tenure rights. In addition, cases brought before regional human rights bodies relying upon international agreements often set important legal precedents for national law. International law acts as a normative baseline, providing the background and setting a trend to improve women's equality globally. Moreover, an international law perspective links general human rights obligations to gender-specific tenure considerations by making references to civil and political as well as economic, social, and cultural rights.

Since the required safeguards for REDD+ highlight the need to ensure consistency with international conventions and agreements, existing international law presents opportunities for advocates to both secure

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¹ For further details, see the longer version of this paper: Silverman, Allison. 2015. Using International Law to Advance Women's Tenure Rights in REDD+. Edited by Niranjali Amerasinghe. Washington, DC: Rights and Resources Initiative and Center for International Environmental Law.

respect for rights where they are already recognized in customary, local, and national systems, as well as strengthen or secure rights where governance systems are weak or non-existent. This brief highlights some of these key international agreements, laws, and commitments and how they can be used to give advocates tools to advance women's tenure rights in REDD+ initiatives. The Annex gives specific examples with links to international instruments that advocates may use to promote consideration of women's tenure rights in REDD+.

While there are opportunities to advance women's tenure rights in REDD+, this brief does not endorse REDD+ as a solution to climate change or tenure issues.

International Rights Relevant to Women's Tenure Rights

Many women's rights advocates have focused on women's participation in REDD+ processes. Advocates should also be aware that there are key internationally-recognized human rights that are relevant to women's tenure rights, and that these could be better reflected in REDD+ frameworks and initiatives. Specifically, there are five types of critical internationally recognized rights relevant to women's tenure rights:

1. Land tenure rights;
2. Women's and gender-specific rights;
3. Procedural access rights;
4. The right to free, prior, and informed consent (FPIC); and,
5. The right to a healthy environment.

These rights can be used to influence the design of REDD+ strategies, design of safeguards and safeguard information systems, and in assessment of country readiness. They are described in detail below.

Land Tenure Rights

International law offers references to property and land rights that are relevant in the context of REDD+. Equal rights over ownership, acquisition, management, administration, enjoyment, and disposition of property are explicitly protected for specific groups, including women. Tenure rights are also embedded in international

Box 1: A tool to help advocates use international law to defend women's rights in REDD+

ForestDefender is an English language legal database that provides a snapshot of international human rights and obligations relevant to forest governance. It captures large amount of information from various sources and presents it in a way that is accessible to and usable by lawyers, activists, and community members alike. It provides information about what international obligations a country has and which rights are implicated by a specific legal instrument. Using *ForestDefender*, advocates can better incorporate rights in advocacy relating to REDD+.

For a full listing of international obligations in a specific country, see the *ForestDefender* web tool at www.forestdefender.org.

obligations to protect and promote rights related to non-discrimination and gender equality, among others. Additionally, international law contains implied rights to land and property through a growing recognition that land is central to the realization of several human rights, such as to livelihoods, housing, and food. A number of instruments broadly ensure equal enjoyment of all economic, social, and cultural rights which also relate to land, territories, natural resources, and property.

Women's or Gender-Specific Rights

All rights provided under international law apply equally to men and women. However, certain international instruments elaborate on these rights with respect to women. Explicit reference to women's or gender-specific rights in international law cover both women's procedural rights – access to information, right to participate, and access to justice – as well as substantive rights of education, property, culture, food, water, and non-discrimination. The Convention on the Elimination of Discrimination against Women (CEDAW) goes furthest in elaborating on rights for women, requiring States to ensure that women have access to information and education, receive equal treatment in land reforms, and have an adequate standard of living without discrimination. Particularly important to REDD+ is the provision of the same rights of “ownership, acquisition, management, administration, enjoyment, and disposition of property” for both spouses.

Explicit reference to women's or gender-specific rights can be both individual and collective in nature. For example, the right to participate is extended to individual women, as well as to groups of women. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) guarantees equal rights and freedoms “to male and female indigenous individuals.” Agenda 21 recognizes the need to strengthen the role of major groups, such as women, and articulates “[t]he need for new forms of participation, such as for individuals, groups, and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions...”

Procedural Access Rights

The right to information, the right to participate in decision-making, and the right of access to justice are fundamental procedural access rights. Where women's tenure rights are already recognized, these procedural rights enable women to operationalize their substantive rights. Where women's tenure rights have not been recognized, procedural access rights provide an opportunity for women to engage in the decisions that affect the land and resources that they depend on for their – and their families' – lives and livelihoods.

Access to Information

In order to advance women's tenure rights in REDD+, women need access to information about the activities and decisions that affect the land and resources upon which they depend. The right of access to information refers to the availability of information and the process public authorities use to provide such information. Access to information is a prerequisite for women to engage fully and effectively. It is also the foundation for transparency and accountability in REDD+. In addition to explicit

mention of access to information, there are implicit references in international law that are particularly important to understanding REDD+, such as education, capacity building or training, among others. Access to information is central to protecting both individual and collective rights.

Right to Participate

Women need to be able to effectively engage and to be perceived as key stakeholders. The right to participate refers to the opportunity for citizens to provide meaningful, timely, and informed input, as well as help shape decisions. Both the implicit and explicit references in international law relating to the right to participate are important for a woman's individual and collective participation in REDD+ design and implementation, including decision-making, monitoring, and mapping. Increasing women's participation in community forestry management committees will enhance their abilities to address their needs and the needs of their families, in addition to assuring their right to REDD+ benefits.

REDD+ is often presented as a “pro-poor” initiative, framed as improving livelihoods and strengthening the rights of some of the world's most vulnerable peoples. Thus, women's right to participate in REDD+ is supported through the extension of the right to participate in local and national government and in rural development planning; to take part in public affairs; and to participate in the political, economic, social, and cultural life of the State, including in formulating and implementing government policy.

Access to Justice

Access to justice recognizes a State's obligation to provide effective, culturally appropriate remedies when rights have been violated. It is vital for women's tenure rights in REDD+. Although international safeguard requirements have been adopted for REDD+, they may not be implemented properly, or disagreements may arise regarding the interpretation of contracts and agreements. If rights are violated, then redress for those who have suffered harm is a key component of the right of access to justice.

The right to access justice provides remedies for both individuals and communities harmed or affected in their enjoyment of rights. It is formulated as “an effective remedy” for violations of fundamental rights and freedoms. An effective remedy can encompass an administrative process or judicial remedies. Access to justice can be articulated as one's right to be recognized as “a person before the law,” “all persons being equal before courts and tribunals,” and the rights of women to effective legal protection equal to that of men. The right to compensation is another implicit reference to access to justice.

Free, Prior, and Informed Consent

The right to Free, Prior, and Informed Consent (FPIC) provides communities with the ability to give or withhold their consent to proposed projects that might affect their lands, territories, or resources. It also requires the timely provision of information that communities may understand in order to effectively participate in decision-making. The foundation for FPIC is rooted in the rights to life, property, and self-determination.

FPIC is an evolving right that most generally applies to Indigenous Peoples. However, it may also extend to other communities depending on, among other factors, their relationship to the land, even if national laws provide otherwise. Moreover, as FPIC is a collective right, it requires respect for culturally appropriate traditional decision-making structures. However, relevant cultural practices must be consistent with human rights, and they cannot be used to legitimize an inequitable structure. Thus, FPIC could be used to advance women's tenure rights because it interlinks various procedural and substantive rights and also because the notion of the collective community must be inclusive of the community as a whole.

One of the clearest articulations of women's right to FPIC is in the UN-REDD's Guidelines on the same, which apply to countries receiving UN-REDD funding. The Guidelines include women as a key group that must be informed. In explaining who gives or withholds consent, the Guidelines strongly recommend that women should be represented in the decision-making process. They also highlight the importance of noting whether women have access to and are able to use community lands and resources, and of assessing how decisions will ensure women's participation. Moreover, CEDAW (an international agreement) and UNDRIP (an international declaration) provide women the right to equality in exercising rights to participate in internal and external decision-making processes and institutions.

Right to a Healthy Environment

The right to a healthy environment requires an environment that is not harmful to people's health or well-being, for both current and future generations. This implicitly includes the right to an adequate standard of living for health and well-being, encompassing food, water, housing, shelter, and biodiversity. The draft Declaration of Human Rights and the Environment also includes tenure: "All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy, and ecologically sound environment." Although some international instruments deal with many of these rights separately, in the context of the larger body of international law they are closely interconnected.

The right to a healthy environment is gaining increasing recognition. It is recognized in the African Charter on Human and Peoples' Rights in the following terms: "all peoples shall have the right to a general satisfactory environment favorable to their development." The San Salvador Protocol to the American Convention on Human Rights references it as well. Furthermore, the right of women to a healthy environment has been recognized in the Maputo Protocol to the African Charter. As of the date of this publication, the right to a healthy environment has been affirmed in some form in more than 100 national constitutions around the world. The right to a healthy environment has also been recognized in case law of regional human rights bodies.

Conclusion

Strengthening women's tenure would give women a stronger voice and greater decision-making power in the implementation of REDD+. International law is an important tool for advocates in advancing women's tenure rights. An in-depth analysis of key

international human rights instruments shows that a variety of rights articulated in international law can be used to influence the design of REDD+ strategies and programs as countries implement REDD+. These include land tenure rights, women's and gender-specific rights, procedural access rights, the right to free, prior, and informed consent, and the right to a healthy environment. To help advocates access relevant rights in international law, the Annex provides links to the specific rights instruments identified in this brief.

Annex: Key Provisions of international agreements relevant to women's tenure rights

Tenure-related rights	Rights to hold, use, and enjoy property	Universal Declaration of Human Rights (UDHR) (Art. 17)
		International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) (Art. 5(d), para (v))
		American Convention on Human Rights (ACHR) (Art. 21)
		African Charter on Human and Peoples' Rights (ACHPR) (Art 14)
	Land rights specific to Indigenous Peoples	International Labour Organization Convention No. 169 (ILO 169) (Arts. 4, 14-19)
		United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Arts. 16, 26)
Gender-specific rights and prohibitions against discrimination	Broad protections for women's rights	UDHR (Preamble)
		Committee on the Elimination of Discrimination against Women (CEDAW) (Arts. 1-2)
		International Covenant on Civil and Political Rights (ICCPR) (Art. 3)
		ICESCR (Art. 3)
		UNDRIP (Art. 44)
		ACHR (Art. 17(4))
		ACHPR (Art 18)
		ACHPR Maputo Protocol (on the rights of women in Africa)
		ASEAN Human Rights Declaration (Art. 4)
	UN Framework Convention on Climate Change (UNFCCC) Cancun Agreement (Para. 7) (on engaging women as stakeholders)	
	Women's rights to own, acquire, manage, administer, enjoy, and dispose of property	CEDAW (Arts. 15, 16(1)(h))
Agenda 21 (Para. 24.2(f))		
ACHPR Maputo Protocol (Arts. 6-7, 18, 19, 21)		
Free, Prior, and Informed Consent (FPIC)	FPIC	UNDRIP (Arts. 10-11, 19, 28-32)
		ACHR (Art. 21)
		ACHPR (Art. 14)
		ICCPR (Art. 1)
		International Covenant on Economic, Social and Cultural Rights (ICESCR) (Art. 1)

Procedural rights	Access to information; freedom of thought/ expression	Rio Declaration on Environment and Development (Rio Declaration) (Art. 10)
		UNFCCC (Art. 6)
		UNFCCC Cancun Safeguards (App. 1, Art. 2(b))
		UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (CSICH) (Arts. 2, 14)
		ICCPR (Art. 19)
		ACHR (Art. 13)
		ACHPR (Art. 9)
		ASEAN Human Rights Declaration (Art. 23)
	Rights to participation	Rio Declaration (Art. 10)
		UNFCCC (Art. 6)
		UNFCCC Cancun Safeguards (App. 1, Art. 2(d))
		Convention for the Safeguarding of Intangible Cultural Heritage (CSICH) (Arts. 15)
		UNDRIP (Arts. 5, 18-19)
		ACHR (Art. 23)
		ACHPR (Art. 13)
		CEDAW (Art. 14)
	ASEAN Human Rights Declaration (Arts. 9, 25)	
	Access to justice/remedy for violation of human rights	Rio Declaration (Art. 10)
		UNDRIP (Art. 11(2), 28, 40)
		ICCPR (Art. 2, 9(4), 13, 14)
		UDHR (Art. 8)
		ACHR (Arts. 7, 10, 25)
		ASEAN Human Rights Declaration (Art. 9)
Right to a healthy environment	Right to a healthy environment	UN Conference on the Human Environment (Stockholm Declaration) (Principle 1)
		ACHPR (Art. 24)
		ACHPR Maputo Protocol (Art. 18)
		ACHR San Salvador Protocol (Art. 11)
		ASEAN Human Rights Declaration (Art. 26(f))
	Right to an adequate standard of living; right to housing	UDHR (Art. 25)
		ASEAN Human Rights Declaration (Art. 26)
		ICERD (Art. 5(e))
		ICESCR (Art. 11)

The instruments and provisions listed herein are intended as examples of relevant language; however, legal analysis must always be tailored to the context in which it is used. Therefore, each legal instrument and provision will have a different degree of relevance and will vary in its power to bind or persuade the target audience depending on the situation. Not all of these legal instruments will be relevant in all situations. The list is also brief, and there are relevant provisions and legal instruments that may not be included in this table. Search the ForestDefender database to see which instruments are relevant in particular country-specific contexts, and consult with a qualified counsel to develop an effective legal advocacy strategy.

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