



USAID
FROM THE AMERICAN PEOPLE

HONDURAS RESOURCE TENURE AND SUSTAINABLE LANDSCAPES ASSESSMENT

TENURE AND GLOBAL CLIMATE CHANGE (TGCC)

MARCH 2015

This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech.

USAID Contract No: AID-OAA-TO-13-00016

Report Author: María Eugenia Recio. The author would like to thank Mario Vallejo Larios for his valuable comments on this work.

Suggested Citation: Recio, M.E. (2015). *Honduras Resource Tenure and Sustainable Landscapes Assessment*. Washington, DC: USAID Tenure and Global Climate Change Program.

Prepared by: Tetra Tech
159 Bank Street, Suite 300
Burlington, VT 05401

Principal Contacts: Matt Sommerville, Chief of Party
matt.sommerville@tetrattech.com

Cristina Alvarez, Project Manager
cristina.alvarez@tetrattech.com

Megan Huth, Deputy Project Manager
megan.huth@tetrattech.com

HONDURAS RESOURCE TENURE AND SUSTAINABLE LANDSCAPES ASSESSMENT

TENURE AND GLOBAL CLIMATE CHANGE (TGCC)

MARCH 2015

DISCLAIMER

This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents of this report are the sole responsibility of its authors and do not necessarily reflect the views of USAID or the United States government.

TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS.....	ii
EXECUTIVE SUMMARY	iv
1.0 GENERAL REDD+ OVERVIEW AND STAKEHOLDER ANALYSIS.....	1
1.1 IMPLEMENTING REDD+ READINESS PROGRAMS IN HONDURAS	1
1.2 PILOT PROJECTS AND PRIORITY AREAS SPECIFIC TO REDD+.....	4
1.3 RELEVANT POLICIES FOR REDD+	7
2.0 STAKEHOLDERS, POSSIBLE IMPACTS AND BENEFITS of REDD+.....	13
2.1 KEY STAKEHOLDERS AND THEIR INVOLVEMENT IN THE REDD+ READINESS PROCESS	13
2.2 PARTIES NOT IDENTIFIED IN REDD+ DOCUMENTS	20
2.3 OPPORTUNITIES GENERATED BY REDD+	21
2.4 STRUCTURES FOR INVOLVING STAKEHOLDERS.....	22
2.5 RECOMMENDATIONS	25
3.0 LAND AND FOREST USE POLICY, LAW AND REGULATION	26
3.1 POLICIES, LAWS, AND REGULATIONS GOVERNING RESOURCE USE	26
3.2 TENURE REGIMES.....	34
3.3 LANDS: DOCUMENTATION AND CONFLICTS	48
3.4 RECOMMENDATIONS.....	50
4.0 CARBON RIGHTS.....	52
4.1 RIGHTS RELATED TO OWNING OR TRADING CARBON.....	52
4.2 CARBON CREDITS AND EXPERIENCE WITH CONTRACTS.....	53
4.3 OWNERSHIP OF CARBON-RELATED RIGHTS.....	59
4.4 RIGHTS TO BENEFITS	63
4.5 INSTITUTIONS FOR BENEFIT SHARING.....	63
4.6 RECOMMENDATIONS.....	64
5.0 FREE, PRIOR AND INFORMED CONSENT (OR CONSULTATION RESULTING IN COMMUNITY SUPPORT) IN HONDURAS	65
5.1 GENERAL INFORMATION ON FPIC	65
5.2 LEGAL BASIS FOR PARTICIPATION, CONSULTATION AND CONSENT	66
5.3 CONFLICTS OVER THE AUTHORIZATION OF HYDROELECTRIC POWER PLANTS AND MINING PROJECTS.....	67
5.4 BIO-CULTURAL PROTOCOL OF THE MISKITO INDIGENOUS PEOPLE: THE RIGHT TO FREE, PRIOR AND INFORMED CONSENT IN OUR TERRITORY OF THE HONDURAN MOSQUITIA	67
5.5 FPIC AND THE NATIONAL REDD+ STRATEGY	68
5.6 KNOWLEDGE OF RIGHTS.....	70
5.7 RECOMMENDATIONS.....	70
6.0 CONCLUSIONS	71
REFERENCES	75
LAWS AND CASES.....	78

ACRONYMS AND ABBREVIATIONS

AFH	Honduran Forest Agenda
AMUPROLAGO	Association of Municipalities for the Protection of Lake Yojoa
BMZ	German Federal Ministry for Economic Cooperation and Development
CATIE	Tropical Agronomic Center for Research and Teaching
CCAD	Central American Commission on Environment and Development
CDM	Clean Development Mechanism
CICC	Inter-institutional Committee on Climate Change
COHEP	Honduran Council of Private Enterprise
CONPAH	Indigenous Peoples Confederation of Honduras
COPINH	Popular Indigenous Council of Honduras
CPPFI	Catalogue of Inalienable Public Forest Heritage
CTICC	Inter-institutional Technical Committee on Climate Change
ESNACIFOR	National School of Forestry Sciences
EU	European Union
FCPF	Forest Carbon Partnership Facility
FEHCAFOR	Honduran Federation of Agroforestry Cooperatives
FEPROAH	Federation of Agroforestry Producers of Honduras
FLEGT	Forest Law Enforcement, Governance and Trade Program
FPIC	Free, Prior, and Informed Consent
GDP	Gross Domestic Product
GIZ	German Agency for Technical Cooperation
ICF	National Institute of Conservation and Forestry Development, Protected Areas and Wildlife
ILO	International Labor Organization
INA	National Agrarian Institute
IP	Property Institute
IUCN	International Union for the Conservation of Nature
MAP-SP	Sico Paulaya Roundtable for Environment and Production
MASTA	Moskitia Asla Takanka
MESAFH	Honduras Socio-Environmental Mechanism for Forest Management
MNIACC	Indigenous and Afro-Honduran Roundtable on Climate Change
MOCAPH	Board of Co-managing NGOs of Protected Areas of Honduras

MTPA	Montecristo Trinational Protected Area
NGO	Non-Governmental Organization
OFRANEH	Black Fraternal Organization of Honduras
PATH	Honduras Land Administration Program
PES	Payment for Environmental Services
PRONAFOR	National Forestry Program
PRRG	Property Rights and Resource Governance
R-PIN	Readiness Plan Idea Note
R-PP	Readiness Preparation Proposal
REDD+	Reducing Emissions from Deforestation and Forest Degradation
RCCP	Regional Climate Change Program
SEDINAFROH	Secretariat for the Development of Indigenous Peoples and Afro-Hondurans
SEFIN	Secretariat of Finance
SEPLAN	Technical Secretariat for Planning and External Cooperation
SERNA	Secretariat of Natural Resources and Environment
SSF	Social Forestry System
TGCC	Tenure and Global Climate Change
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
USAID	U.S. Agency for International Development
VPA	Voluntary Partnership Agreement
ZEDE	Zone for Employment and Economic Development

EXECUTIVE SUMMARY

With a significant portion of its territory covered by forests, Honduras can benefit from implementing a policy to reduce emissions from deforestation and forest degradation (REDD+), both to mitigate climate change and to adapt to its consequences. Adaptation is, without a doubt, a priority in Honduras, which has faced severe climatic events, including hurricanes and floods. Currently, a myriad of initiatives are implementing REDD+ activities in the country, and a readiness preparation process is taking place, financed by international programs. Regardless of which areas are chosen for REDD+ implementation, a review of national policies and experiences suggests that the success of Honduras's approach to REDD+ implementation will be closely linked to finding appropriate solutions to problems associated with land and resource tenure. Particularly, it seems that ownership, possession, and occupation of land and forests could impact which stakeholders can participate in REDD+.

This resource tenure and sustainable landscapes assessment conducted for the U.S. Agency for International Development Tenure and Global Climate Change program examines the current obstacles and opportunities for REDD+ implementation in Honduras through:

- a tenure-based stakeholder analysis;
- an assessment of tenure under Honduras's present policies;
- an analysis of rights to receive benefits based on ownership of resources; and
- an assessment of Honduras's current legal framework for consultation and consent.

The analysis describes stakeholders who will either be involved in or be affected by REDD+ interventions in Honduras, including indigenous peoples, Afro-Honduran communities, large- and small-scale farmers, landowners, and the state. From the perspective of land tenure, the review addresses a number of relevant challenges these groups will face.

First, the rights of indigenous and Afro-Honduran peoples over the lands that they traditionally occupied is recognized in the Property Law, as is the granting of "collective" titles respecting the traditional form of communal property ownership. These peoples face land tenure insecurity, however, including with regards to recognition of their rights to lands and the respect of those rights. For the case of communal title, the law also allows communities to put an end to this type of communal title and divide the land among different individuals, therefore fragmenting the communal territory into individual and smaller plots. These issues should be adequately considered when implementing REDD+ to ensure the integrity of the area under REDD+. REDD+ in Honduras could affect the traditional livelihoods of these forest-dependent communities and their aspirations for their land claims, particularly in areas where their ownership has not been yet recognized.

In addition, land tenure among farmers and rural landowners is complex and varied. Honduras has been characterized by a high concentration of productive lands in the hands of a few owners, as well as by a large number of "minifundios," or peasant-owned smallholdings measuring less than 1 hectare (ha). This situation makes poor peasant farmers especially vulnerable to REDD+ implementation, since preventing them from using forest resources or limiting their small-scale agricultural activities could have a significant impact on their livelihoods. One recommendation in this regard is that REDD+ be implemented using a combination of land uses to allow sustainable development and food security for these communities. REDD+ also must

adequately involve large landholders, as they might not be interested in conserving forests on their productive lands or, on the contrary, they might concentrate the benefits from REDD+ implementation.

The REDD+ readiness activities that the country is undertaking include supporting channels for stakeholders to use for dialoguing and to participate, although some who do not agree with implementing REDD+, such as Afro-Honduran organizations, are not participating in these activities. Moreover, some relevant institutions from the government and economically relevant actors, such as the large infrastructure sector, do not seem to be substantially involved in the REDD+ process.

Overall, land regularization is a particularly relevant challenge in Honduras as there is a high level of informal land occupation and peasant migration. At the same time, a key component of effective REDD+ is ensuring respect for the rights of the most vulnerable communities and targeting benefits to the managers of the forests. In this regard, there are legal tools that can facilitate the implementation of REDD+, including usufruct contracts that the state can enter into with rural inhabitants.

From the point of view of tenure and forest policies, the Honduran legal framework links the ownership of forest resources to landownership. However, the variety of occupation situations and laws applicable to land tenure is challenging. Particularly, successive laws adopted to regularize land tenure have resulted in creating multiple layers of laws and institutions with some overlapping responsibilities. Overall, clarification and coordination of these multiple responsibilities, as well as subsequent implementation, are key.

Honduran laws contain a number of perverse incentives that could lead to deforestation, as well as provisions with the objective of enhancing forest protection. Incentives for forest protection have been included in, among others, the 2007 Forestry Law, but implementation and success have been very limited. In parallel, for over 20 years, agricultural reform in Honduras made lands with natural forests eligible for expropriation. These opposing trends continue to be reflected in laws currently in force. For example, while the Agricultural Modernization Law rejects the concept that trees can be cut down to acquire landownership, the Civil Code continues to grant possession (a means for land acquisition) based on cutting down trees. This and other laws would need to be amended accordingly so as to avoid creating perverse incentives for logging and forest clearance.

Other aspects in the legal framework also should be considered when implementing REDD+ vis-à-vis the insecurity of land tenure. Some risks include laws that leave open various reasons to justify land expropriation, including not making “adequate” use of it. Additionally, there are risks associated with the acquisition of private ownership by a third party through acquisitive prescription, supplementary title, or occupation in accordance with the numerous laws and regulations in force.

Carbon rights are not defined in Honduras’s legal framework. The legal framework defines carbon sequestration as an environmental service. There are laws that clearly link the benefits and rights to forests and other natural resources to the owner of the land. The potential benefits of REDD+ could thus be legally linked to the owner of the resources, and as a result, land tenure should be clearly established before implementing REDD+ activities in a specific area.

Once the land and resource tenure issues are clarified and the participants in REDD+ give their consent, the government could legally engage with international buyers to negotiate agreements concerning carbon sequestration generated by REDD+, according to the Honduran legal framework. The state has clear authority concerning environmental protection and the rational use of natural resources. In addition, the Forestry Law gives the competent national institution on forests broad powers both to regulate the use of forest resources through management plans and to retain ownership of national forest areas. For certain specific aspects of the law, however, including the ability of private owners to enter into agreements with third parties internationally, further clarity would be required to ensure legal certainty.

Other factors that could make compliance with international carbon sequestration agreements challenging include:

- A diverse and extremely fragmented legal framework, which complicates implementation in the context of limited institutional capacities, particularly in the forest sector;
- Implementation difficulties on the ground, and the need to increase monitoring and systematic but experiential learning processes; and
- Challenges related to land tenure in general throughout the country, including overlapping competencies among relevant institutions and difficulty in implementing land tenure laws.

The consent of indigenous peoples and Afro-Honduran populations to the use of natural resources in their territories is key for REDD+ implementation. In the context of current REDD+ activities, including the readiness preparation proposal, there are clear indications of the intention to ensure the free, prior, and informed consent of the relevant groups. Although Honduras does not have a specific law on consultation or consent in its national context, it has ratified International Labor Organization Convention 169, *Indigenous and Tribal Peoples Convention*, which is often used as a benchmark for participation by these peoples in REDD+. Moreover, implementing initiatives have facilitated the development of an ad hoc national institutional arrangement to promote participation of these populations from the early stages of planning and implementation, such as the national table for indigenous communities.

Other key aspects that remain to be addressed in REDD+ agreements include considering allocation of benefits and the liability of actors, institutions, and the state for noncompliance.

The analysis shows that considering enhancing land tenure in Honduras is crucial for REDD+ implementation and future funding for forest carbon initiatives. Moreover, providing clarity on land and resource tenure will help promote investment, reduce the level of conflict, and improve land management in the country. Some of the options presented are easy to implement, while others will require a longer term political commitment or investment or a higher level of trust between the stakeholders. In addition, the land tenure reforms needed for the successful implementation of REDD+ can be introduced gradually and should be part of a continuous and participatory process.

I.0 GENERAL REDD+ OVERVIEW AND STAKEHOLDER ANALYSIS

As the global community seeks to address climate change through mitigation and adaptation measures across landscapes in developing countries, the importance of resource tenure has been increasingly recognized. Methodologies and guidance documents on reducing emissions from deforestation and forest degradation (REDD+)¹—from the World Bank’s Carbon Fund Methodological Framework to the Verified Carbon Standard—now include requirements on undertaking resource tenure assessments and demonstrating that underlying resource tenure concerns will not undermine implementation. Many countries, however, still are finding it difficult to address resource tenure in a comprehensive manner and face challenges that include:

- Identifying the range of ways in which tenure security impacts the success of climate change mitigation and adaptation activities;
- Assessing the legal and social frameworks that underlie tenure security; and
- Identifying and implementing incremental steps to improve tenure security as it relates to successful implementation of climate change initiatives.

The following analysis applies a land and resource tenure assessment framework to evaluate four elements of successful land use-based climate change mitigation activities.² The assessment focuses on how tenure relates to 1) identifying relevant stakeholders; 2) understanding and adapting land and forest policy incentive mechanisms; 3) clarifying rights to benefit and understanding rights associated with carbon; and 4) engaging stakeholders through free, prior, and informed consent (FPIC). The consideration of FPIC throughout this assessment is in relation to the national legal framework of Honduras and does not reflect a position of the U.S. government on FPIC.

The analysis was undertaken for the U.S. Agency for International Development’s (USAID’s) Central America Regional Climate Change Program (RCCP); complementary analyses were undertaken in Guatemala and Panama. The analysis applies analytical tools developed by USAID through the Property Rights and Resource Governance (PRRG) and Tenure and Global Climate Change (TGCC) programs to guide each of these areas of inquiry. It is designed for use by policy makers, donors, and project implementers in Panama to better understand how tenure can be a constraining factor into the success of the current REDD+ plans.

I.1 IMPLEMENTING REDD+ READINESS PROGRAMS IN HONDURAS

Honduras is the most forested country in Central America after Mexico (CABAL 2010), and it preserves some of the last remaining intact tropical forests in Central America. The Río Plátano Biosphere Reserve,

¹ REDD+ refers to reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries.

² For the development of this report, the content of Honduran laws and policies were translated into English. For detailed reference of the literal content, refer to the Spanish version of the report.

which covers about 7 percent of the country's land area, is considered a World Heritage Site by the United Nations Educational, Scientific and Cultural Organization (UNESCO), despite high deforestation rates of approximately 2 percent per year (GIZ 2010). The 2014 Human Development Index ranks Honduras at 129 out of 182 countries (UNDP, 2014), with a rural economy based on small family businesses that depend on agriculture, particularly subsistence farming, though there are also some large companies that produce coffee, bananas, pineapple, and other crops for exportation.

Since ratifying the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, Honduras has taken various actions to tackle climate change, mainly related to adaptation. Due to its geographic characteristics, the country has been hit hard by several natural disasters over recent years, and such events are expected to increase as a result of climate change. For example, Hurricane Mitch caused more than 7,000 deaths, as well as the destruction of 70 percent of crops and 60 percent of the country's road network (GIZ 2010).

Although policies and laws have been adopted to address disaster relief and water resources management, Honduras can still harness its forests to adapt to climate change impacts. The concept of payments for environmental services (PES), primarily focused on the provision of water-related environmental services, and other forest conservation instruments have been considered over the past decade, both at the level of concrete experiences and national legislation. These efforts have led to the development of various forest protection initiatives.

Currently, there is no national-level REDD+ mechanism, but preparatory work for REDD+ implementation has begun, led by national institutions. At present, Honduras is awaiting REDD-Readiness funds from the Forest Carbon Partnership Facility (FCPF). The United Nations Development Program (UNDP) will be the implementing partner for these activities. Together with the assumption of office of the newly elected government, this funding is expected to help reactivate the REDD+ process. Honduras also is receiving support from other entities and initiatives such as the German Agency for Technical Cooperation (GIZ) and may in the future cooperate with the UN-REDD Program. In the process of drafting the REDD+ readiness preparation proposal (R-PP) for submission to the FCPF, Honduras sought to broaden the participation of indigenous and Afro-Honduran peoples as well as civil society by establishing an Indigenous and Afro-Honduran Roundtable on Climate Change (MNIACC) and involving various institutions and sectors of civil society in a REDD+ subcommittee. Since the country's current REDD+ R-PP is for a longer period of time and larger budget than FCPF funding will cover, the government must play a key role in coordinating and channeling different funding sources to achieve the national vision for REDD+.

The country has various laws and regulations that are relevant to implementing REDD+, including a recently adopted climate change law and a climate change strategy. The main challenge in both cases is to implement them in a harmonious and synergistic manner.

1.1.1 Preparing to Implement REDD+

Honduras has not yet established a mechanism for implementing REDD+, but it has begun to carry out REDD+ readiness work on several fronts. Various initiatives have emerged in the country, implemented by different stakeholders.

1.1.2 The World Bank FCPF Program

Starting in 2008, Honduras began taking steps to receive funds for REDD+ readiness under the World Bank FCPF program. In 2013, the R-PP was approved and the UNDP was asked to be the implementing partner for 2014–2017.

In 2009, the Secretariat of Natural Resources and Environment (SERNA) submitted its initial proposal—the readiness plan idea note—and during 2011 and 2012, the government worked on the draft R-PP.³ Although the proposal was developed by the REDD+ Working Subcommittee as a platform for intersectoral dialogue, the Indigenous Peoples Confederation of Honduras (CONPAH) severely criticized a lack of participation in the process, sending communications to SERNA and the FCPF arguing that the lack of consultation on the proposal was a violation of their rights, including their right to FPIC (CONPAH, letter sent to the Minister of SERNA on February 8, 2012).⁴ After dialogue was established between CONPAH and the government of Honduras, an act of commitment was signed in January 2013 to lay the foundation for a mutually respectful dialogue and to define how the consultation process should be organized with indigenous and Afro-Honduran peoples, including the establishment of the MNIACC.⁵ In this way, Honduras succeeded in engaging various stakeholders in early dialogue on REDD+. In March 2013, the R-PP was approved for USD 3,800,000. In October 2013, Honduras’s proposal for funding to create a national joint program was vetted at a meeting of the national REDD+ subcommittee.⁶

The funds provided by the FCPF will cover only USD 3,800,000 of the expenses associated with the activities outlined in the R-PP, which are expected to total USD 8,659,600. Thus, it is essential for the various initiatives implemented in the country to create synergies in some way with the planned REDD+ readiness activities. The implementation of the R-PP is expected to take approximately 5 years, while the FCPF funds will be disbursed over a 3-year period.

To this end, the R-PP includes among its activities the creation of a platform for coordination between agencies, programs, and projects that have funds for REDD+. This platform will be used to gather information about the availability of other funding sources to cover the deficit (UNDP, Readiness Preparation Proposal Assessment Note, 2014).

The Regional REDD/CCAD-GIZ Program

The Regional REDD+ Program of the Central American Commission on Environment and Development (CCAD), the Central American Integration System, and GIZ, with financial support from the German Federal Ministry for Economic Cooperation and Development (BMZ), has been implemented since 2010 across Central American countries, including Honduras. Specifically in Honduras, the program has supported the REDD+ process in two ways:

- Through funding the preparation of elements of the REDD+ proposal, such as a baseline analysis of the legal framework (Vallejo Larios 2013a), a Preliminary Assessment of the Causes of Deforestation and Forest Degradation in Honduras (Vallejo Larios 2011), and an updated forest map; and,
- Through the Honduras Socio-Environmental Mechanism for Forest Management (MESAFH) pilot project, which was developed in Gualaco, Department of Olancho.

Other Initiatives and Support for REDD+

As Honduras also is a partner in the UN-REDD Program, it may be possible to secure support for specific activities within this framework.

³ The energy and mining sector was added to SERNA under reforms to the General Public Administration Law through Decree No. 266-2013, published in La Gaceta on January 23, 2014, and its acronym changed to SERNAM, using “My Environment” as its slogan name. The same thing has happened with other institutions mentioned in this document, for which we have retained the name and status they had when this study was prepared.

⁴ Available at: <https://www.forestcarbonpartnership.org/honduras-0>

⁵ UNDP Honduras, En el marco del proceso REDD Gobierno y CONPAH firman acta sobre derechos indígenas y afrohondureños sobre su territorio, January 22, 2013, available at: <http://www.hn.undp.org/content/honduras/es/home/presscenter/articles/2013/01/22/en-el-marco-del-proceso-redd-gobierno-y-conpah-firman-acta-sobre-derechos-indigenas-y-afrohondure-os-sobre-su-territorio/>

⁶ After the elaboration of this report, the funds were approved.

It also is worth mentioning that Honduras is in negotiations with the European Union (EU) under the Forest Law Enforcement, Governance and Trade (FLEGT) initiative, which seeks to improve governance and reduce illegal logging by strengthening legal and sustainable forest management, and promoting the trade of legally produced timber. This initiative is implemented through Voluntary Partnership Agreements (VPAs), which are bilateral trade agreements between the EU and partner countries (whether a timber producer or a processor). Honduras has stated that its REDD+ strategy “will, to the greatest extent possible, make use of the facilities of the VPA-FLEGT mechanism in Honduras” (Honduras Government., 2013 R-PP).

1.2 PILOT PROJECTS AND PRIORITY AREAS SPECIFIC TO REDD+

1.2.1 Pilot Projects

Despite the complicated land tenure situation in Honduras, the government and/or private environmental organizations have implemented a number of initiatives for forest protection. Several of the programs are listed in this section, although in general only limited information is available about the current status of their implementation. Nevertheless, these initiatives can provide fertile ground for analysis of possible approaches to addressing land tenure issues.

In Pico Bonito National Park, a PES initiative to trade carbon credits has been established.⁷ Despite this example, initiatives to provide carbon sequestration through the maintenance of forest cover are at a relatively early stage in Honduras, where most forest protection efforts have focused on maintaining water resource quality and quantity, protecting biodiversity, and providing other environmental services. For instance, PES schemes have been established to provide hydrological environmental services and soil protection (Mejías Esquivel and Segura Bonilla 2002). Another current initiative to establish a PES scheme focuses on protecting biodiversity, particularly the Emerald Hummingbird, an endangered endemic species.⁸

Other forest protection efforts in the country have included developing forest management schemes in four areas of the country based on the Model Forests concept. This initiative, which are carried out through the Ibero-American Model Forest Network, seek to promote social, inclusive, and participatory processes for the sustainable development of a territory.⁹ The model forest initiatives are being implemented in the following areas:

- ***Yoro (established 2007)***: This model forest is located in the country’s north-central region, bordered on the north by the Department of Atlántida (Atlántida Model Forest). The territory has an area of 321,219 ha, of which 130,210 ha are government-owned and 191,009 ha are privately owned.
- ***Atlántida (established 2006)***: This model forest includes the whole Department of Atlántida, on the country’s northern coast. The area is comprised of approximately 440,000 ha of land, which includes eight municipalities that contain two important urban centers on the Atlantic Coast: La Ceiba and Tela.¹⁰ Forestry groups are active in the area, and harvesting areas under management plans and forest plantation certification.
- ***Northeastern Olancho (established 2012)***. This model forest is located in Olancho with more than 324,000 ha.

⁷ See <http://www.bosquespicobonito.com/es/reforestation/>, accessed October 1, 2014.

⁸ More information on the legal instruments used in these examples is provided in Section 4.

⁹ The Model Forest concept originated in the 1990s, when the Canadian government was looking for an alternative to the conflicts between forest concession companies and communities living in forest areas. The first model forests were created in 1992 and introduced in Latin America after 1995. For more information, see <http://www.bosquesmodelo.net/que-es-un-bosque-modelo/>, accessed 09-11-2014.

¹⁰ For more information, see <http://www.bmatlantida.com/galeria.html>, accessed 09-11-2014.

- ***Sico-Paulaya (established 2012):*** This model forest is located in the municipality of Iriona, Department of Colon, on the northeastern Caribbean coast of Honduras. The area covers more than 90 percent of the Sierra del Río Tinto Negro protected area (proposed as a forest reserve) and 194,979 ha of the Río Plátano Biosphere Reserve. This area has great ethnic, socioeconomic, forestry, agricultural-livestock, and ecological value. Currently, the initiative is being led by the Sico Paulaya Roundtable for Environment and Production (MAP-SP) and is an important effort in providing connectivity and continuity to the Mesoamerican Biological Corridor.

Another forest protection pilot project is the MESAFH project supported by the Regional REDD+/CCAD-GIZ Program. The project was implemented by SERNA and the National Institute of Conservation and Forestry Development, Protected Areas and Wildlife (ICF) in the municipality of Gualaco, Department of Olancho. The aim of this project, which was supported by Programa de Fomento al Manejo Sostenible de Recursos Naturales y Desarrollo Económico Local, was to train residents of forest communities in the sustainable management of timber products. Its activities included reviewing procedures, fees, and administrative contracts; as well as providing training in the use of tools to comply with international forestry standards and make timber sales more profitable for the communities. After some consideration, this pilot project was replaced by another one in the municipality of Teupasente in El Paraíso Department, which has also achieved successful results in community forestry.

REDD+ Pilot Project Initiative and the RCCP

The USAID-funded RCCP led by the Tropical Agronomic Center for Research and Teaching (CATIE) and the International Union for the Conservation of Nature (IUCN) includes plans to develop a pilot project in the Sico-Paulaya area. The pilot project will be implemented by SERNA and ICF, with support from the Madre Verde Foundation as a local partner. The goal of the project will be to reduce greenhouse gas emissions produced by deforestation and forest degradation in a 65,000-ha area located between the municipalities of Iriona, Department of Colon, and Juan Francisco Bulnes, and Department of Gracias a Dios.

The Sico-Paulaya valley zone provides important environmental services to the country; for example, the country's two largest rivers—the Patuca and the Wans Coco, or Segovia—flow through the area. Also, various ethnic groups live there, including Miskitos (the majority), Tawahkas, Garifunas, and Ladinos. Although data on population numbers and social aspects vary, the approximately 3,902-square-kilometer area has an estimated population of 38,197, with a Human Development Index of 0.64 and a literacy rate of about 47 percent.¹¹ There is an important dependence on farming activities in the region, where the main activities are agricultural and livestock production—including planting basic grains, cassava and plantain; cattle breeding; and poultry and rabbit farming. The cultivation of African palm has proliferated.

Various national and international institutions and organizations are supporting activities for the development of the area as well as multiple projects,¹² including the Sico-Paulaya Model Forest, Corazón Biosphere, Río Plátano Biosphere, Ecosystems Project implemented by UNDP, and Finnfor/CATIE. The MAP-SP, which was created in 2008 in the area of influence of the municipality of Iriona and the Sico valley, provides opportunities for consensus-building and coordination between local and external stakeholders on administering and managing the natural resources and production in the Sico-Paulaya valley.¹³

Because of its proximity to ports and its socioeconomic conditions, this region is one of the areas identified by the Honduran government as a potential site for the construction of a model city or Zone for Employment and Economic Development (ZEDE). ZEDes have legal personality, are authorized to establish their own policies and regulations,¹⁴ and are created to, among other things, facilitate favorable conditions for the country to insert itself into world markets under highly competitive and stable rules (Decree No. 120-2013, Organic Law of the ZEDes).

¹¹ See <http://zede.gob.hn/wp-content/uploads/2013/11/Sico-Paulaya.pdf>, accessed 09-11-2014.

¹² The institutions include Forests of the World, Italy's International Committee for the Development of People, Popol Nah Tun Foundation, Madera Verde Foundation, Germany's GIZ, the National Agrarian Institute, Forest Conservation Institute (ICF), Rainforest Alliance, and the U.S. Forest Service.

¹³ See <http://mesa-mapsp.blogspot.de/p/1.html>, accessed 09-11-2014.

¹⁴ However, these zones are subject to the Constitution of the Republic and the national government on issues relating to sovereignty, implementation of justice, territory, national defense, foreign relations, election-related matters, and the issuance of identity documents and passports, as established in an amendment to the seventh paragraph of article 329 of

Based on the analysis in this report and before any further consideration of the area as a potential ZEDE, it is recommended that a review be conducted of the types of occupations and activities carried out in the area, specifically looking at the type of tenure that exists. If there are unregularized lands, they should be regularized or usufruct agreements should be entered into in state forest areas (see section 3.2, Tenure Regimes). With respect to ZEDE rules and regulations, it is important for there to be plans for the expansion of activities to ensure the sustainability of the pilot project over time.

Source: www.zede.gob.hn sico-paulaya.

1.2.2 Priority Areas for REDD+

The R-PP does not identify priority areas for REDD+ or areas where REDD+ pilot projects will be implemented, although it does support implementing them. The document contains information on the concentration of forests and deforestation that provides a basis for determining which sites might be considered priority areas for REDD+. Section 2.0 discusses several of the areas that face serious land tenure challenges.

Concentration of Forests in Honduras

- The R-PP mentions that an estimated 70 percent of the country's broadleaf forests are located in indigenous and Afro-Honduran territories.
- The forested land area of Honduras is estimated at 5.6 million ha, of which 4 million ha are located in 91 declared protected areas. Broadleaf forests cover 3.74 million ha; pinewoods cover 2.47 million ha (both dense and sparse pine forests); and the rest are mixed forest, dry forest, and mangroves, according to the ICF Statistical Yearbook of Forestry 2011 (ICF, 2011).
- Other estimates indicate that about 40 percent of the country's territory is covered by forests, of which 33 percent are located in indigenous territories and 32 percent in protected areas. Almost all of the tropical forest is found in La Mosquitia, which is inhabited by an estimated 75,000 indigenous families from the Miskito, Garifuna, Tawahka, Pech, and Tolupan peoples, as well as Afro-descendant groups (CABAL 2010). Other sources identify the main existing ethnic groups in La Mosquitia as only the Miskito, Tawahka, Garifuna, and Pech.
- The following areas are considered the most deforested in the country:
 - The northern region of Comayagua, which is used for coffee crops;
 - Illegal logging areas (e.g., several municipalities in northern Olancho);
 - Protected areas in La Mosquitia, due to forest degradation and deforestation;
 - Areas throughout the country that are directly impacted by population growth, mainly around large cities (Tegucigalpa and Comayagüela, San Pedro Sula and the whole Sula Valley metropolitan area, La Ceiba), but also in smaller human settlements that have grown in size and number; and
 - Pine and broadleaf forests where management plans have allowed poor silvicultural practices to be implemented (Vallejo Larios 2011).

Other Aspects Relevant to Selecting Areas for REDD+

Among the areas that have a relevant index of deforestation, the following aspects could potentially be of value in implementing REDD+ (according to information provided by Vallejo Larios):

the Constitution. The creation of ZEDEs was a controversial issue in the country, and this report does not address the content of this qualification nor does it assess the consequences of its implementation.

- The area of La Mosquitia, located on the Caribbean coast and bordered by Nicaragua, has achieved advances in participation and knowledge of climate change. A Miskitu biocultural protocol that establishes the procedure for exercising the right to FPIC was developed in the area and validated by the Miskito people.
- In the municipality of Gualaco in the Department of Olancho, successful community forestry activities are underway.
- In the Department of Atlántida, where deforestation also is relevant, carbon assessment studies have been conducted.

1.3 RELEVANT POLICIES FOR REDD+

Honduras does not have a specific policy or any legislation for implementing REDD+, but it does have a variety of relevant laws and policy instruments. The country's main challenges lie in implementation and harmonization. Although in principle, all laws must be followed and adhered to, the dispersion of laws makes it necessary to bear in mind the hierarchy between them and to identify which laws will take precedence in each case when implementing REDD+. ¹⁵

At the international level, Honduras has ratified various instruments that are relevant to the implementation of REDD+, including the UNFCCC in 1995, the Kyoto Protocol in 2000, the Convention on Biological Diversity in 1995, and the United Nations Convention to Combat Desertification in 1997.

Starting in the 1990s, Honduras began to modernize the state, but it was not until after 2009, in the aftermath of a social and political crisis and a coup d'état of the Executive Power, that the Law for the Establishment of a Country Vision and the Adoption of a National Plan for Honduras were adopted. Both provide the framework for planning the country's development. The objectives of the various sectoral policies, including forestry and climate change policies, need to be embedded in this framework. The targets adopted are ambitious and seek to make substantive changes to the country's development model. Their implementation, however, has produced mixed results.

In terms of development planning, the Country Vision and National Plan establish regional development as the most appropriate management model. The development plans defined in each region will together constitute the regulatory framework for production-oriented investment, social development, and investment in infrastructure. The country's regionalization is based on the creation of development regions associated with different watersheds, but it is understood that this does not take the place of political divisions nor does it relieve the municipalities or associations of municipalities of their responsibilities, obligations, or rights.

Concerning climate change laws, Honduras is making efforts to promote climate change mitigation. It is important to remember, however, that the country has one of the world's highest levels of vulnerability to extreme weather events—including earthquakes, hurricanes, tropical storms, floods, landslides, and excess rainfall—as well as high levels of poverty and social inequality. Between 1990 and 2012, Honduras's annual economic losses caused by these events amounted to 2.8 percent of its gross domestic product (GDP) (World Bank 2014).

Honduras should continue to devote efforts to climate change adaptation, the reduction of vulnerability to disasters, and the improvement of food sovereignty, which are inherently related to land tenure security and improved planning for the country. Given the tenure challenges facing the country, the Country Vision has incorporated two relevant targets for 2038:

- Halve the number of peasant families without access to land; and

¹⁵ Regarding potential conflicts between laws of different hierarchies compare an opinion in Vallejo Larios 2013.

- Reduce to less than 5 percent the number of land parcels without property titles.

At the forest sector level, a large number of laws and strategies exist that should be reviewed and updated to ensure that they work with REDD+ implementation, not against it. Duplication, overlap, and contradiction across several of the instruments, as well as obsolete information and gaps in information in others must all be addressed (Vallejo Larios 2013b, p. 11). For example, the R-PP identifies at least nine strategies, including the following:

- Illegal logging and trade
- National forest protection
- National reforestation
- Community forestry
- National forest program
- National protected areas
- National climate change
- ICF strategic plan

Some of these strategies have been adopted by a competent sectoral institution, based on the responsibilities assigned to it by law. Others have been recognized or reflected in a legal norm or an agreement, such as the environmental goods and services strategy, which has helped to increase their legitimacy and knowledge of them. Others have not gone through this type of process, and in some cases it is difficult to obtain the texts of the strategies.

Regarding financing and incentives for forest protection, funding mechanisms have been created for protected areas and forest protection, among other initiatives. In this context, the R-PP recognizes the need for adjustments to the existing REDD+ mechanisms, such as including specific funding windows for REDD+ in the Protected Areas and Wildlife Management Fund and directing REDD+ project proposals toward the Fund for Forestry Reinvestment and Promotion of Plantations.

The following table provides a brief overview of relevant legal and policy instruments, but the most important aspects for REDD+ implementation will be further discussed in the relevant sections of this report.

Policies Relevant to Implementing REDD+

Policy	Relevant Aspects
NATIONAL PLANNING- NATIONAL DEVELOPMENT PLAN	<p>Law for the Establishment of a Country Vision and the Adoption of a National Plan for Honduras (Country Vision) (Legislative Decree No. 286-2009).</p> <p>The Country Vision provides a 2038 target image for Honduras and a framework for planning and target setting for climate change mitigation and adaptation, as well as the incorporation of this issue as a cross-cutting theme in sectoral planning. The targets for climate change include:</p> <ul style="list-style-type: none"> - Reaching 1 million ha of forest land that is in the process of ecological and productive restoration by accessing the international carbon credit market. - Placing 400,000 ha of land under irrigation, meeting 100 percent of the national demand for food. - Increasing the participation rate of renewable energy to 80 percent in the country's electricity production matrix. <p>The National Plan 2010-2022 sets out strategic areas for the achievement of intermediate objectives in the Country Vision and is formulated for a 12-year period.</p> <p>The Government Plan 2010-2014 establishes short-term targets. Although there are</p>

	<p>numerous targets, some of the most relevant to REDD+ are outlined below, including:</p> <ul style="list-style-type: none"> - Increasing agricultural and livestock production and food security: Bringing at least 9,000 new ha of land into productive activity under land-use planning principles; increasing the value of agricultural and livestock production in the country to 24 million lempiras; increasing exportations of agri-food products by 60 percent. - Increasing power-generating capacity, with the participation of renewable resources: Reaching an installed energy production capacity of over 850,000 kilowatts based on renewable sources and increasing the water resource use rate to 7.5 percent. <p>Incentives for forest protection: afforest and reforest 4,000 ha of working forest land each year, reaching a total of 35,000 ha; protect 1.5 million ha of forest lands from clearing, illegal logging, fires, forest pests, and diseases; achieve the declaration of a total of 81 protected areas; achieve the incorporation of a total of 32 protected areas with management plans containing financial sustainability mechanisms; annually place at least 600 thousand tons of emission reductions in the international carbon market; 25 letters of approval for Clean Development Mechanism (CDM) projects.</p>
ENVIRONMENTAL POLICY	<p>Right to an adequate environment for human health: The state is responsible for preserving the environment to protect human health (art. 145, National Constitution), as well as for the technical operation and rational use of the Nation's natural resources whose use must be regulated by the state. The reforestation of the country and conservation of forests is declared to be of national convenience and collective interest (art. 340).</p> <p>General Environment Law (Decree 104-93): This law stipulates that forest resources must be managed and used under the principles of biodiversity protection and sustainable yield, and the concept of multiple resource use, supporting their economic, ecological, and social functions (art. 45).</p> <p>Environmental Policy (Agreement 361-2005): Objectives and general guidelines include promoting the economic valuation of environmental heritage; fostering the development of ecotourism, the market for environmental goods and services, and mechanisms for internalizing environmental costs.</p> <p>National Committee for Environmental Goods and Services (recognized by Executive Agreement 113-2002) and the National Strategy for Environmental Goods and Services (Agreement N° 990-2007): The committee was established as a body for national advocacy and coordination of actions aimed at promoting the valuation and negotiation of, and compensation for, environmental services. In practice, the strategy's approach has been more focused on compensation for hydrological environmental services through forest conservation.</p>
CLIMATE CHANGE POLICY	<p>In January 2014, the Climate Change Law was adopted, establishing guiding principles and reaffirming the policy instruments already adopted with respect to climate change.</p> <p>The National Climate Change Strategy (Legislative Decree 216-2010, of December 2010): The law establishes objectives and guidelines for mitigation, adaptation, and policy. The guidelines of the strategy, which also proposes the future adoption of an action plan, are aligned with the implementation of REDD+ and the promotion of sustainable and resilient agriculture. They include:</p> <ul style="list-style-type: none"> - Preserving the composition of ecosystems to improve their capacity to adapt to climate change. - Preventing the loss of broadleaf and coniferous forests caused by the incidence of fires and forest pests under conditions of climate change. - Implementing adequate forest management for protection and production, in the context of the alteration of natural wealth, functionality, and symbiotic relationships

	caused by climate change.
FOREST POLICY	<p>Forest protection and reforestation objectives incorporated into the Country Vision and National Plan.</p> <p>Forest, Protected Areas and Wildlife Policy: Incorporates guidelines for productive and conservation forests, ecosystems, and wildlife. In 2010, the policy was brought into line with the National Plan.</p> <p>Forest, Protected Areas and Wildlife Law (Forestry Law) (Decree 98-2007 of February 26, 2008, La Gaceta No. 31544) and its regulations (Agreement 031-2010): Establishes the forest regime as well as a program for the recovery of national forest areas. This legislation recognizes PESs, allowing suppliers of environmental goods and services produced by forests (e.g., water, fauna, carbon capture, climate) to reach agreement with users on payments as long as the protection of the forests that provide these services is ensured.</p> <ul style="list-style-type: none"> - ICF Institutional Strategic Plan for 2010-2015: Envisages the promotion of REDD+ and carbon sequestration activities. - National Forest, Protected Areas and Wildlife Program (PRONAFOR 2010-2030): Envisages the possibility of funding for the implementation of REDD+ actions. <p>Forestry incentives: Fund for Forestry Reinvestment and Promotion of Plantations (created by Decree 98-2007). Provides incentives for afforestation and reforestation, created in Chapter III of Title VIII (art. 148-154) of the Forestry Law.</p> <p>National Forestry Program (PRONAFOR): The operative arm of the agri-food sector for forestry development with a strategic vision to 2021, which is implemented through four subprograms: Forests and Productive Development; Forest and Community Development; Forest, Water and Environmental Services; and Forests and Biodiversity.</p>
LAND USE AND LAND-USE PLANNING POLICIES	<p>Land-Use Planning Law (Decree No. 180-2003): Establishes land-use planning as a state policy. The Country Vision must be implemented in coordination with this law. Thus, the regional development plans need to be designed with a land-use planning approach that addresses risk management, adaptation to climate change, and early recovery, with a gender perspective.</p>
NATIONAL WATER RESOURCES POLICY	<p>Government Plan envisages these targets:</p> <ul style="list-style-type: none"> - Incorporating 12 watershed councils into the regional development councils. - Supporting community and municipal management to achieve the declaration and protection of a total of 726 water-producing watersheds. - Supporting the development and implementation of 44 integrated watershed resource management plans. - Implementing 12 new projects with compensation mechanisms for watershed conservation and management. - Promoting the establishment of 49 PES mechanisms for micro-watersheds. <p>General Water Law (Decree N° 181-2009): Establishes principles related to integrated water resource management. The law creates the National Water Resource Institute, whose responsibilities include the preparation of the National Hydrological Plan. It contains specific provisions relating to the vulnerability and risk of water resources and recognizes the possibility of compensation for the provision of hydrological environmental services (art. 33).</p>
OTHER RELEVANT POLICIES	<p>Attention to and prevention of risk and vulnerability to climate change: various instruments exist, including the State Policies for Integrated Risk Management in Honduras (PEGIRH).</p>

1.3.1 Environmental Institutions and REDD+

According to the R-PP, two institutions are responsible for leading the readiness process for REDD+ implementation at the national level: SERNA, the focal point for the UNFCCC, and ICF, the body that has legally mandated responsibility for forest management in Honduras and acts as the technical focal point for REDD+. Although these institutions are leading process, the importance of about 11 state institutions with forest-related responsibilities should not be underestimated (Vallejo Larios 2013b). The ICF has a large number of responsibilities, some of which overlap with those of other entities. After the newly elected national president takes office, changes are expected to be made in the institutional composition of the ICF, which will become part of the institutional framework of the renewed Secretary of Energy, Natural Resources, Environment and Mining, which will be referred to as “My environment” (“Mi Ambiente”).¹⁶ In addition, the state has implemented a new set of norms that bring substantive changes to the administration in general.¹⁷

The R-PP includes a list of the various institutions and their roles in REDD+ implementation. At the **national level**, the **Technical Secretariat for Planning and External Cooperation (SEPLAN)** has a central role in national planning, including in connection with land-use planning and international cooperation.¹⁸ The **subnational entities** also play an important role in REDD+ implementation since Honduras has adopted national policies on decentralization, transparency, and public participation. The result has been the decentralization and transfer of a large number of responsibilities to the **municipalities**, which have gained considerable autonomy, as well as the creation of **regional development councils** to help facilitate communication and interaction among key local stakeholders. Section 2.0 discusses the councils’ coordination and participation responsibilities in the section on participatory structures.

The following table provides a summary of authorities with relevant responsibilities at the sectoral level.

Institution	Authority
Former Secretariat of Natural Resources and the Environment (SERNA), currently “Mi ambiente”	<p>SERNA’s functions (General Environment Law and Agreement N° 1089-97) relating to environmental management include:</p> <ul style="list-style-type: none"> - Formulation, coordination, and evaluation of policies for conservation and improvement of the environment in general - Legislation for the declaration and administration of protected natural areas belonging to the National System of Protected Areas - Issuance and administration of technical regulations on the use of land, water, and other renewable natural resources - Organization and management of the National Environmental Impact Assessment System (SINEIA) - Issuance and control of environmental permits and conducting environmental audits

¹⁶ These changes were implemented under Executive Decree PCM 042-2014 (adopted on 16 July 2014) with the purpose of enhancing institutional transparency and citizenship participation and simplifying proceedings in the environmental authority. Both the Honduran Institute on Mining and Geology and the ICF will be subject to former SERNA.

¹⁷ For more information, see Decree 266-2013, from 16 December 2013, Ley para Optimizar la Administración Pública, Mejorar los Servicios a la Ciudadanía y Fortalecimiento de la Transparencia en el Gobierno; Executive Decree PCM 001-2014, creating sectoral authorities; and Executive Decree PCM 042-2014, introducing changes to the ICF. Compare a posterior analysis to this study on how these changes concern REDD+ implementation: Mario Vallejo Larios, *Obstáculos y Opciones Legales para la Implementación de Iniciativas REDD+ en Honduras*, November 2014. Available at <http://agendaforestal.org/wp-content/uploads/2015/12/Obst%C3%A1culos-y-Opciones-Legales-para-la-Implementaci%C3%B3n.pdf>.

¹⁸ Like other entities of the Executive Branch, this state secretariat has undergone changes to its name and structure (even at the administrative level) as part of a reform process introduced by the Law for Optimization of Public Administration (Decree 266-2013). The process was initiated in January 2014 but is still being operationalized.

National Institute of Conservation and Forestry Development, Protected Areas and Wildlife (ICF), currently subscribed to “Mi ambiente” Secretary	<ul style="list-style-type: none"> - Promotion of the development of the forestry sector in all of its social, economic, cultural, and environmental aspects within a framework of sustainability - Coordination of forest sector activities, and promotion of participatory and decentralized management - Approval or rejection of management plans, and cancellation of permits authorizing the uses provided for in the management plans - Design and implementation of the national strategy for control of illegal logging and illegal transport of forest products
Secretariat of Agriculture and Livestock	<ul style="list-style-type: none"> -Promotion of sustainable agricultural and rural development -Improvement of food security by promoting the production of staple foods -Coordination of implementation of agricultural policies by institutions within the public agricultural sector
National Agrarian Institute (INA)	<ul style="list-style-type: none"> -Responsibilities for land tenure and titling, which are key to REDD+ implementation in Honduras -Governing body for agrarian policy; its programs and projects must be consistent with the National Government Plan
Secretariat of Finance (SEFIN)	<ul style="list-style-type: none"> -Formulates, coordinates, and implements policies relating to public finance and the General Budget of the Republic -Approves tax incentives that projects can use in the framework of REDD+
Property Institute (IP)	<ul style="list-style-type: none"> -Issues administrative regulations for the establishment and operation of property registries -Administers the land regularization, titling, and registration program (Honduras Land Administration Program) -Regulates the operation of associate centers that handle certain records, including the Catalogue of Inalienable Public Forest Heritage (CPPFI)
Secretariat for the Development of Indigenous Peoples and Afro-Hondurans (SEDINAFROH)	<ul style="list-style-type: none"> -Ensures compliance with the standards for participation of indigenous and Afro-Honduran peoples in the REDD+ Strategy <p>Note: This secretariat was eliminated in January 2014 and is now a department within the Secretariat of Development and Social Inclusion.</p>
Secretariat of the Interior and Population	<ul style="list-style-type: none"> -Regulates the central government’s relationship with the municipalities -Distributes financial resources transferred to the municipalities by law
Other Authorities	<ul style="list-style-type: none"> -The municipalities are the highest authority of the municipal district and, in some cases, as the owners of forest areas, they are responsible for their administration (Law of Municipalities, Decree 134-90) -Other relevant functions of the municipalities include protecting the environment and promoting reforestation; issuing operation permits for forestry operations conducted in the municipality; issuing environmental permits; and exercising controls if they are delegated environmental licensing duties -In 2013, the army was granted the authority to exploit forests under its custody as well as the products of such forests

2.0 STAKEHOLDERS, POSSIBLE IMPACTS AND BENEFITS OF REDD+

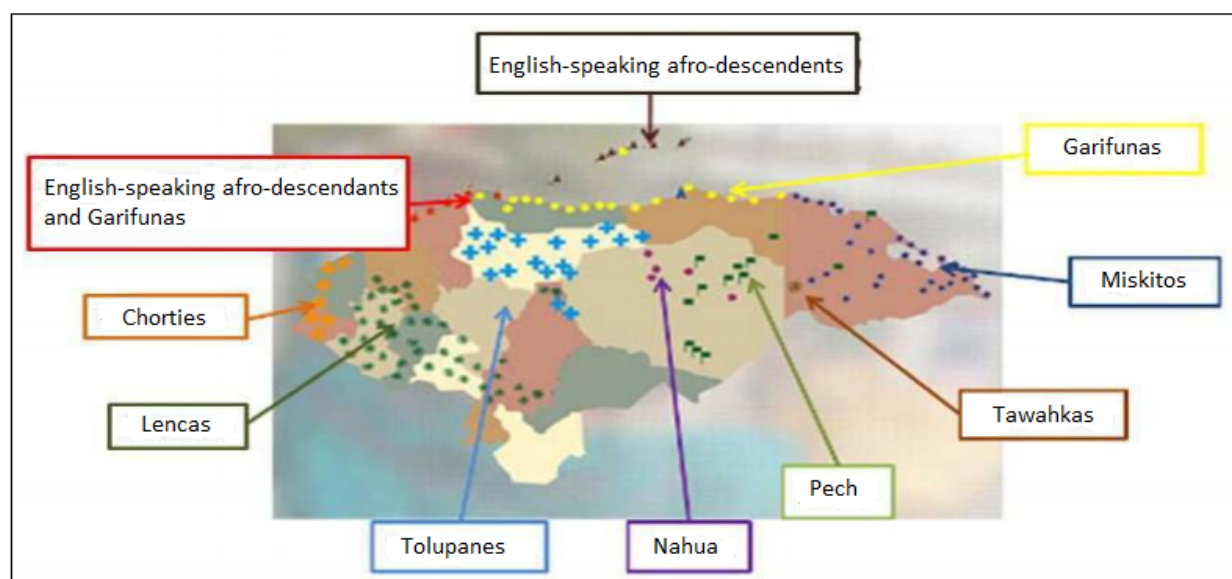
2.1 KEY STAKEHOLDERS AND THEIR INVOLVEMENT IN THE REDD+ READINESS PROCESS

This section discusses the main groups and organizations that might be affected by and/or benefit from REDD+ being implemented in Honduras and some of their distinguishing characteristics. The content of this section is based on existing information and consultations conducted for this assessment.

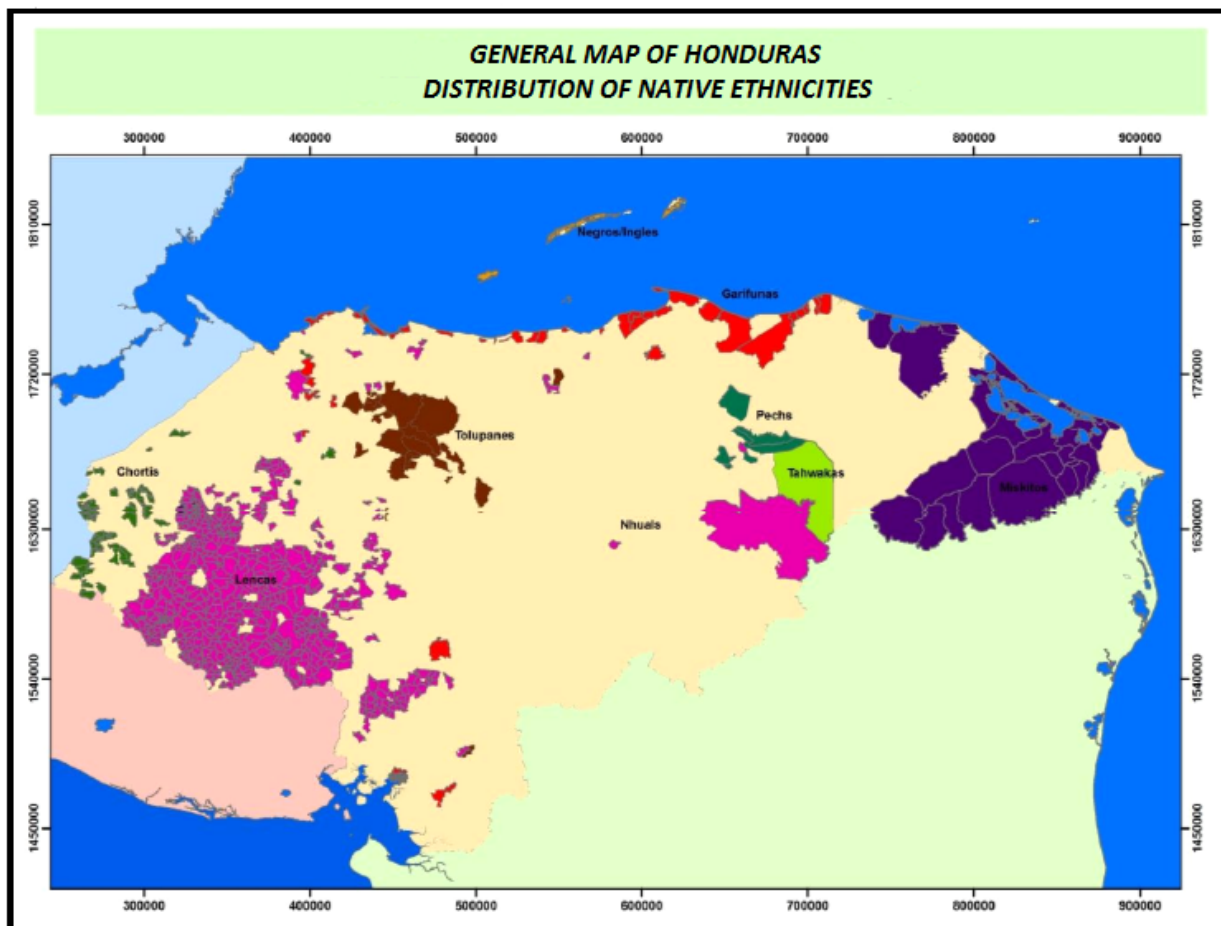
2.1.1 Indigenous Communities and Afro-Honduran Peoples

Honduras is inhabited by seven indigenous peoples—the Lenca, Maya-Chortí, Tolupan, Pech, Tawahka (Sumo), Miskito, and Nahua—and two Afro-descendant peoples—the Garifunas and English-speaking black communities. These peoples are geographically distributed throughout the country, especially in the east, north, and northwest regions of Honduras (GIZ 2010). According to official 2010 census statistics, the indigenous and Afro-descendant population in Honduras is an estimated 496,000 people, which is approximately 6.5 percent of the total population (IGWIA, 2009). Other sources, however, show a higher percentage ranging from 7 percent to 12.5 percent, and more recent government estimates suggest an even higher figure (GIZ 2010).

The 2010 Report on Indigenous Peoples (KIVLAK/GIZ, 2010), shows the approximate distribution of indigenous and Afro-Honduran communities on the following map.



Source: KIVLAK/GIZ, 2010



Source: Honduras Government, R-PP, 2010.

Indigenous peoples:

The indigenous communities in Honduras have a close relationship with natural resources and forests and grow small-scale crops, among other activities. The economic activities of indigenous peoples in the south and west of the country (Chortis and Lencas) are based primarily on crops such as corn and beans and, to a lesser extent, sugar cane and fruits for subsistence. Women commonly sell handicrafts and men work as day laborers on coffee and tobacco plantations. The Pech, Tawankas, and Miskitos make their living from the use of forest resources, dedicating a small part of their lands to subsistence agriculture (GIZ 2010). The Miskitos are primarily engaged in subsistence activities on the fertile riverbanks, where they live and work during the lobster and prawn fishing season.

Poverty in Honduras affects 74 percent of the rural population, according to the Inter-American Development Bank (IADB, 2008). However, estimates indicate that the levels of child mortality, lack of access to clean water, and illiteracy are slightly higher among the indigenous rural population than among the nonindigenous members of the rural population (GIZ, 2010).

Afro Honduran peoples:

The Garifuna and English-speaking black communities are two Afro-descendant ethnic groups and, although they are not strictly indigenous peoples, the laws of the country generally consider them together due to their common differences from mainstream society. Furthermore, these ethnic groups see themselves as connected to the indigenous population.

The Garifuna arrived on the Island of Roatan in 1797 and were later moved to Trujillo, from where they migrated out along the coast, devoting themselves to fishing and agriculture. In 1887, the first title was granted to these communities, when the first *ejido* land title was given to the Caribs. These communities extend from Dangriga, Belize, to La Fe and Orinoco, Nicaragua.

Generally, their livelihoods are based on working in plantation agriculture and in the tourism sector. They also obtain a substantial percentage of their income from remittances sent by family members working abroad.

Land Tenure:

Indigenous peoples:

The land tenure situation of indigenous peoples varies. Based on the 1992 Agricultural Modernization Law, the INA titled lands in the name of certain indigenous groups: Pech, Tawahka, and Tolupan (Galeana 2013). However, these land titles were limited to granting ownership rights to inhabited areas, excluding the communities' functional areas (Galeana and Pantoja 2013). More recently, the Miskito people were granted titles that included common areas and gave them inalienable and nonassignable land rights. The Property Law recognizes the "right of indigenous and Afro-Honduran peoples over lands traditionally owned by them and not prohibited by the law" (art. 93, Property Law). The law also recognizes the granting of "collective" titles to these peoples, as well as their traditional form of communal property ownership (art. 94). Although the property will be inalienable, unattachable, and imprescriptible (art. 100), the possibility exists for the communities themselves to put an end to this communal regime, authorize leasing to third parties, or authorize other kinds of contracts that enable the community to participate in investments contributing to its development (art. 100). This situation should be taken into consideration if REDD+ is implemented in these areas. Although some lands of Miskito communities have been titled in recent years as "inter-community property," there are still lands remaining to be titled. In general, the land tenure situation of these groups is insecure and includes challenges to their rights in the form of third-party invasions, and occupation and illegal logging in the forest areas.

Because many indigenous territories coincide with state-protected areas, the management of those areas "should be carried out jointly by the indigenous peoples and the State" (art. 101). Thus, it is crucial for the affected peoples to participate in the development of the management plans.

Afro-Honduran peoples:

The land tenure situation of the Afro-Honduran peoples also varies. Based on the 1992 Agricultural Modernization Law, the INA titled lands in the name of certain Afro-Honduran groups, including the Garifuna (Galeana 2013). The situation for these groups is similar to that of the indigenous peoples, including the possibility that the communities themselves could put an end to the communal regime, authorize leasing to third parties, or authorize contracts that enable the community to participate in investments contributing to its development (art. 100, Property Law). This aspect has been heavily criticized, particularly by the Black Fraternal Organization of Honduras (OFRANEH), which has called attention to the risks of dividing common lands into small units—including the loss of culture and identity—as well as the increased vulnerability of private landowners who are pressured to sell by, among others, drug traffickers.

Natural and Forest Resources: In cases in which indigenous and Afro-Honduran peoples have title to the land, there is no doubt about ownership of the resources because the law links ownership of the resources to ownership of the land. In cases in which no title yet exists, in recognition of traditional occupation and ILO Convention 169, they could be deemed to have rights to these resources, although in practice this would require formal recognition.

Rights Related to Carbon: The legislation contains no express definition of ownership of carbon rights (see section 4.3 for details). However, in cases of landownership or even of the existence of land-use contracts with the state, the title holders have the right to receive the associated benefits. The problem arises when the

land is not titled, although by application of ILO Convention 169, this right should also be understood to exist.

Conflicts over Land Tenure and Resource Use: The Afro-Honduran communities and indigenous peoples face similar situations and have traditionally been considered together in internationally funded programs. The territory claimed by indigenous peoples occupies approximately 2 million ha out of the country's total land area of 11.2 million ha. Currently, only 10 percent of indigenous people in Honduras have property titles to their lands (17.8 percent of the national land area) (International Work Group for Indigenous Affairs 2014). Land access and security are among the main challenges facing indigenous peoples, and conflicts over these issues have increased since 2011 (Grupo Internacional De Trabajo Sobre Asuntos Indigenas, 2014). A large number of indigenous peoples have been displaced from their original territories, with the exception of the Tawahkas and Miskitos. The expansion of the agricultural frontier has limited their use of their land due to the invasion of their territories by peasants, loggers, drug traffickers, and other outsiders. This invasion has had significant effects on access to resources and has resulted in a climate of violence in the communities (McSweeney 2014). However, in recent years, indigenous peoples' claims to their ancestral lands have led to disputes, as has the manner in which land has been legalized through establishment of individual rather than communal rights, as a number of ethnic groups have preferred.¹⁹ The one exception was the granting of intercommunity property titles to the Miskito people in 2013.²⁰

Indigenous and Afro-Honduran Peoples' Representation and Groups: Toward the end of the 1980s, the indigenous groups began to organize themselves, and between 1992 and 2003, the consolidation of the indigenous and black movements gained more momentum. Each indigenous group has organized into one or more of its own associations, and these associations are generally recognized by the state as legal entities, each with its own legal personality:

- Lenca: National Lenca Indigenous Organization of Honduras, Popular Indigenous Council of Honduras (Civic Council of Popular and Indigenous Organizations of Honduras) (COPINH), Lenca Indigenous Movement of Honduras, Lenca Indigenous Federation.
- Miskitos: Moskitia Asla Takanka (MASTA), MUIHKA (bilingual indigenous organization of peoples of the Mosquitia in Nicaragua and Honduras).
- Tolupanes: Federation of Indigenous Xicaques de Yoro Tribes.
- Pech: Federation of Pech Tribes of Honduras.
- Chortis: National Council of Indigenous Ch'orti' Maya of Honduras.
- Tawakha: Tawakha Indigenous Federation of Honduras.
- Tahua: Nahua Indigenous Federation of Honduras.

The Afro-Honduran communities also have representative bodies. These groups have organized themselves and are represented through CONPAH, the coordinating body of indigenous and Afro-Honduran organizations that brings together all federations, including the Native Bay Islanders' Professional and Laborers Association. The Garifuna also have OFRANEH, a group that has broken away from CONPAH.

Involvement in REDD+ Activities: CONPAH is a partner that has played an active role in the development of REDD+ in Honduras.

¹⁹ For more information, see Tendencias, Santos.

²⁰ National Government of Honduras. 2013. Entrega Histórica del Segundo Título de Propiedad Intercomunitario a Favor del Pueblo Miskito, Concejo Territorial Ahuya Yar, available at http://www.ip.gob.hn/images/sampledata/boletn_Ahuya%20Yari_mayo2013.pdf.

CONPAH and its Role as a Partner and Leader in the REDD+ Process

CONPAH was established in 1992 as a platform in the struggle for territorial recognition and the defense of the rights of indigenous and Afro-Honduran peoples in Honduras, and it is part of the Indigenous Council of Central America. Until recently, it brought together all indigenous and black peoples in Honduras. However, since early 2009, CONPAH no longer represents all indigenous peoples.

The indigenous peoples' movement and dialogue with the government have accomplished, among other things the ratification of ILO Convention 169 "on indigenous and tribal peoples in independent countries;" the creation of indigenous municipalities, which were charged with simplifying territorial administration; the closure of sawmills that processed wood harvested in areas of ecological importance; and the creation of certain protected areas, including the Tawahka Asangni Biosphere Reserve.

CONPAH has been involved in developing project documents with the FCPF with the government and, in January 2013, agreed with the government on 15 points establishing the rights of indigenous and Afro-Honduran peoples in the national REDD+ process, including the manner in which consultation and dialogue should be organized.

COPINH and other Afro-Honduran organizations also have become engaged in this process, expressing their opposition to the implementation of REDD+ in the country.²¹ Moreover, to facilitate the participation of indigenous peoples, a roundtable for discussion and consensus-building, MNIACC, has been established. It will be led by CONPAH, its federations, and other indigenous and Afro-Honduran organizations in the country. Any action taken in the territory of these communities must be carried out with the knowledge and participation of the MNIACC.

The R-PP establishes a series of participation channels to involve different stakeholders in the REDD+ process. With regard to indigenous communities, it repeatedly states that their forms of self-governance will be respected. It also refers to an agreement signed by the ICF and MASTA, which establishes that in Mosquitia territory, the existing community and territorial structures—known as communal and territorial councils—will be the governing bodies instead of creating new ones. The R-PP states that this mechanism will be promoted as a broader initiative to be extended to all indigenous territories in the country.

OFRANEH and COPINH have openly voiced opposition to the implementation of REDD+ in the country. COPINH also has made presentations lamenting that COPINH and other indigenous and black organizations have not been represented in CONPAH and did not participate in the MNIACC. These presentations have called for the cessation of all kinds of REDD+ activities (letter from Berta Cáceres to FCPF, February 10, 2013). In response, the FCPF noted that the R-PP is only a road map to prepare for REDD+ and that they "will give consideration to the requests made by COPINH, respecting their position of rejecting REDD+," noting that the doors to dialogue will remain open in the future.

Impacts: REDD+ could have an impact on the traditional livelihoods of these communities, which depend on forest resources and whose aspirations for their land claims to be recognized may be affected, particularly in areas where their ownership has not yet been recognized. For example, knowledge of medicinal forest species and products used to make handicrafts is very important to the different ethnic groups, and most of the by-products come from community forests adjacent to their settlements (Santos Zelaya 2008).

The internal dynamics of how communities can carry out REDD+-related responsibilities and any restrictions on transferring titled land in the context of REDD+ must be considered in the development of implementation plans.

The application of REDD+ in lands inhabited by indigenous peoples whose ownership has not yet been recognized could pose increased risks in terms of restricting access to the land and resources, as well as providing incentives for land occupation by outside actors. Therefore, it is essential to ensure that the territories are properly recognized before implementing a REDD+ mechanism in those areas.

2.1.2 Peasants

²¹ See COPINH: Rechazamos la creación de los Proyectos ONUREDD / REDD+ y la reglamentación retorcida al Derecho de Consulta y Consentimiento Libre, Previo e Informado (C-CLIP), available at: <http://www.copinh.org/article/copinh-rechazamos-la-creacion-de-los-proyectos-onu/>, accessed October 7, 2014.

Honduras has been characterized a country of productive land concentrated in the hands of a few owners.²² It also has a large number of “minifundios,” or smallholdings owned by peasants and measuring less than 1 ha. National agricultural legislation and its replacements have shaped the country’s agrarian administrative landscape, which is highly complex in terms of tenure.

Forest Use and Peasants

The situation of peasant farmers is economically uneven. Although there is a high concentration of landowner producers in some parts of the country, other areas have very high levels of poverty among peasants, and their activities are mostly for subsistence.

Forests provide a large quantity of goods and services, especially to the poorest rural populations, including forest by-products such as firewood, which in many cases is the only source of domestic energy. Nontimber by-products such as mosses, bark, resins, and some fruits also play an important role in marginal areas.

Some deforestation problems started with reform processes in dense forests, which poor peasant farmers later cleared to make “improvements” (Santos Zelaya 2008). The settlement of rural families in forest areas has had negative consequences due to the ease-of-access to forest-covered land and the potential for generating income by clearing it, such as by illegally allocating land. This has led to rapid parceling and fragmentation of forest land for subsistence farming.

The landowners’ situation is different. Some have grabbed up large tracts of state forest lands, which they have cleared and converted to other uses such as raising cattle (Santos Zelaya 2008). For these landowners, the forests represent an obstacle to the expansion of agricultural and livestock activities—a significant source of their income, especially with a view to more short-term profits.

There also are a number of peasants involved in community forestry activities, which legislation has attempted to promote over the last two decades. In addition, an important framework exists for the development of cooperatives and other associative entities that provide a structure for working with low-income stakeholders who occupy forest lands. These communities generally establish a legal basis for their activities by signing management or usufruct contracts for public forest areas that allow them to make use of forest products, goods, and services without acquiring ownership of the land. In comparative terms, these communities are more vulnerable than indigenous peoples because they lack a special protection regime, such as ILO Convention 169 for indigenous and tribal peoples.

Land Tenure: The land tenure situation varies according to the particular circumstances of each peasant farmer. Tenure might be of private ownership, including full ownership rights such as alienation, use, and usufruct; based on possession; or based on a leasing or usufruct contract. Land titling to peasant groups or families also is possible under the agrarian reform.

There is a very high level of informal land occupation and peasant migration, which means that land regularization is still a huge challenge in Honduras (USAID 2010). When state-owned forest areas are titled in that way, the Forestry Law allows the state to enter into contracts of varying durations with the occupants for the usufruct, management, or comanagement of the land. In general, these contracts give the occupants the opportunity to receive the benefits produced by the activities carried out on the land.

While it is difficult to provide exact data on land area and the associated types of land tenure it has been stated that most farms have a surface area of less than 1 ha and that minifundios are still predominant in the country (Santos Zelaya 2008). Currently, there are various land conflicts between small-scale peasant farmers and large landowners/entrepreneurs. In areas such as Bajo Aguán, these conflicts have led to serious violence and the death of peasant leaders and employees of the businesses.

Natural and Forest Resources: In cases in which the land is titled, there are no doubts about the ownership of the resources, because the law links ownership of resources to ownership of the land (see section 3.0 for details on land and resource tenure). In cases in which no title yet exists, regularization is necessary to clarify tenure. In state forest lands, it is possible to assume management of land and natural resources through usufruct contracts. In 1974, through the Law of the Honduran Corporation for Forestry Development,

²² It has been estimated that approximately 3.5 percent of agribusinesses account for more than 50 percent of the agricultural land in use and that 10 families own more than 80 percent of private property in Honduras (GIZ, 2010).

Honduras created the Social Forestry System (SSF). The SSF attempted to include organized peasant groups in various ways in the management and use of the country's forest resources, ensuring their effective participation in the direct and indirect benefits of the forest and contributing to the improvement of living conditions in rural forest areas.

Rights Related to Carbon: The legislation contains no express definition of ownership of carbon rights (see section 4.3). However, in cases of landownership or even of the existence of land use contracts with the state, the title holders have the right to receive the associated benefits. The problem arises when the land is not titled.

Inclusion in REDD+ Activities, Interests, and Benefits: These groups, represented by various entities, are included on the REDD+ subcommittee, through which the main activities for coordination and development of REDD+ readiness are carried out.

Impacts: Both of these groups, large landowners and small farmers, must be made aware of key forest issues. Consideration should be given to how to best involve them, including through forest protection activities and the provision of environmental services. Small peasant farmers living in poverty are particularly vulnerable. Preventing them from using forest resources or limiting their small-scale agricultural activities could have a significant impact on their livelihoods. Moreover, given the food sovereignty problems in the country, REDD+ implementation should take into account the need to combine land uses that allow the sustainable development of these communities.

2.1.3 Other Sectors

Non-Governmental Organizations (NGOs)

A significant number of institutions in Honduras support initiatives in the country ranging from improving forest management to implementing payment schemes for watershed environmental services. These national and international institutions include various associations for environmental protection and the protection of indigenous rights. Several of them are taking part in the REDD+ process through their participation in the REDD+ subcommittee.

The R-PP specifically identifies a number of private sector actors and NGOs that are participating in the REDD+ dialogue through the subcommittee, including the Honduran Forest Agenda (AFH), Timber Association of Honduras, Association of Municipalities of Honduras, Advocacy Network on Climate Change, National School of Forestry Sciences (ESNACIFOR), Association of Forestry Professionals of Honduras, Honduran Federation of Agroforestry Cooperatives (FEHCAFOR), Federation of Agroforestry Producers of Honduras (FEPROAH), Honduran Coffee Institute, and the Honduran Council of Private Enterprise (COHEP). Furthermore, the R-PP provides for other actors that are identified to be invited to form part of the REDD+ subcommittee, noting that subcommittee membership will be continually reviewed.

A number of NGOs also have a relevant role to play in the management of protected areas that contain forests, so their consideration and incorporation into REDD+ discussions and implementation concerning the specific areas under their management is crucial.²³ This report identifies some NGOs that are very active in forest protection and the establishment of PES.²⁴

Private Sector, Including the Forestry Industry

There are organizations that bring together entities from the productive forest sector, such as FEPROAH and FEHCAFOR, both of which work mainly with pine forest cooperatives. They have focused on setting up municipal and community councils that, in accordance with applicable laws and regulations, provide a way for communities to regulate access to the forests.

²³ For further information, consult page 39 of this report.

²⁴ For further information, see pages 59-63 of this report.

Other notable organizations in this sector are the Honduran Network of Private Nature Reserves and COHEP. Centers of knowledge transmission and generation (academia) participating in the National REDD Working Group include the University Center of the Atlantic Coast, the National Autonomous University of Honduras, and ESNACIFOR (CABAL 2010).

The Honduran State

Land Tenure: National forest lands are those owned by the state on behalf of the nation. Lands that cannot be proven to belong to another owner belong to the state and the Forestry Law establishes a process for their regularization. Changes have been observed in land and forest tenure over the past 15 years. The previous scenario of 60 percent of state lands and 40 percent of private lands appears to have shifted towards an increase in private ownership of forests (Santos Zelaya 2010). This could be because of the land-titling processes underway in some departments as well as to various reforms in property registration. However, a considerable number of the people living in or near forests are small subsistence farmers who generally do not meet the conditions for land titling and are thus excluded from the benefits of holding title in their name and the option to obtain loans (Santos Zelaya 2008, p. 13).

Protected areas established in national forest areas must be registered in the Catalogue of Inalienable Public Forest Heritage (CPPFI), which stipulates that they cannot be titled, sold, or exchanged.

Natural and Forest Resources: In the case of peasant-occupied state areas, particularly forest areas, the state provides access to the benefits of natural resource exploitation and management through usufruct contracts.

Rights Related to Carbon: The legislation contains no express definition of ownership of carbon rights (see section 4.3 for details).

2.2 PARTIES NOT IDENTIFIED IN REDD+ DOCUMENTS

Overall, the proposal presented for REDD+ readiness funding by the FCPF is comprehensive and incorporates and mentions various other actors. However, in addition to identifying these actors, it will be necessary to strengthen the inclusion of some of them during REDD+ implementation, including:

Municipal Authorities: In the 1990s, Honduras began a decentralization process with policies to strengthen local governments, giving rise to new institutions, programs, and projects aimed at strengthening decentralization and local capacities. In 1993, the General Law of the Environment decentralized different environmental protection authorities to the municipalities, some relating to forest management (e.g., management of production forests, protected areas, and aspects of reforestation). The municipalities have some responsibilities for administration and management of their forest areas and planning within their areas of jurisdiction. They undoubtedly have an important part to play in the implementation of any forest protection initiative.

Mining and Infrastructure Sectors: The mining and infrastructure sectors, particularly hydroelectric plants, are economically significant. It is important, in the context of national forests, to involve the developers of these projects so they are aware of how they can participate in the mechanism and promote social inclusion.

Participation of NGOs and Platforms with a Gender Perspective: Although institutions related to gender concerns and natural resources already have been involved in the process, this involvement should be further expanded. The R-PP provides for the mapping, identification, and incorporation of these institutions into the REDD+ dialogue to ensure their integration into the process.

City Dwellers: While certain relevant aspects of PESs have begun to be explored in Honduras in relation to the provision of hydrological environmental services, efforts should be made to increase the involvement of both city dwellers and private sector stakeholders who benefit from the environmental services. Promoting

these experiences with the support of the inhabitants of major cities also could contribute to achieving the objectives of REDD+. The search for such synergies is of critical importance.

2.3 OPPORTUNITIES GENERATED BY REDD+

1. In general, REDD+ can generate opportunities to consolidate existing land-titling processes for indigenous and peasant communities, and provide a vehicle for taking legal action to simplify and ensure the rights to use and manage natural and forest resources. However, it is important to ensure that these processes do not lead to a *de facto* eviction of communities with a long history of living in the territories. At the same time, it is important to find solutions to deal with the high levels of migration of rural populations. It is essential to seek synergies with the existing land regularization processes.
2. REDD+ could be a way of supporting the forest managers—mainly communities in a precarious economic situation—in generating resources from forest conservation, while encouraging the maintenance of their traditional practices. Some specific experiences in the provision of hydrological environmental services also could be supported and synergies found with REDD+.
3. It is essential to ensure the transparency of the process as well as the existence of a complaint mechanism to facilitate monitoring the implementation of agreements, usufruct contracts, and land titling.

Land in Honduras is a source of conflicts and disputes between different stakeholders and interests that have often escalated into high levels of violence. The uneven structure of landownership, mainly based on minifundios as well as “latifundios” or large estates, in the hands of a few people, has resulted in clashes. While REDD+ could create a variety of opportunities in the country, implementing a general scheme in the context of these conflicts will undeniably be a significant challenge. The government must find a way to build on concrete experiences carried out with, for example, PESs to attempt to replicate initiatives in specific, carefully selected areas where pilot projects can be implemented.

There are some strengths worth mentioning on which a successful REDD+ readiness campaign could be built, such as the existence of representative associations among indigenous and Afro-Honduran communities, the existing community forestry work in the country, and a strong development of cooperatives. Moreover, the existence of various NGOs and institutions active in the field provides an opportunity to empower them as partners.

Finally, based on his reading of the R-PP, Vallejo has identified a number of benefits that will be generated in general for all stakeholders involved in the process:

- Institutional strengthening of planning actions and implementing previously avoided deforestation projects;
- Using carbon benefits to support existing initiatives of indigenous and peasant communities and the local economy;
- Having better instruments to improve forest governance, generate reliable statistics, and reduce the rate of deforestation and illegal logging (e.g., an updated forest inventory);
- Improving the design and implementation of policies, strategies, and programs to halt deforestation, forest degradation, and illegal logging, including studies or tools to establish official, transparent information on deforestation/forest degradation; and
- Supporting forest governance and institutional strengthening in general to improve national capacities.

The expected benefits of REDD+ are defined in the R-PP and organized into four categories: economic, environmental, sociocultural, and legal. Vallejo has adjusted the benefits mentioned in the R-PP, identifying which actors, in his opinion, could benefit from them.

Proposed Benefits of the REDD+ Strategy by Stakeholder Group

Expected Benefit	Group Benefited				
	PUS	ECC	PRS	OSC	ACA
Enhanced Local Productivity (Forestry and Agriculture)	*	*	*		
Improved Household Income		*	*		
Greater Opportunities for Investment in Forestry Projects	*	*	*		
Promotion of Small Businesses	*	*	*	*	
Promotion of Forest Certification		*	*		
Promotion and Development of Local Tourism	*	*	*		
Conservation of Forest Resources	*	*	*	*	*
Biodiversity Conservation	*	*	*	*	*
Improved Availability and Quality of Water Resources	*	*	*	*	*
Integrity of Ecosystems	*	*	*	*	*
Improved Agroforestry Techniques	*	*	*		
Conservation of Scenic Beauty	*	*	*	*	*
Generation of Employment	*	*	*	*	
Improvement of Living Conditions	*	*	*	*	*
Promotion of Women's Participation	*	*	*	*	*
Conflict Resolution	*	*	*		
Strengthening of Grassroots Community Organizations		*			
Increased Participation of Local Governments	*				
Increase in Environmental Education	*	*	*	*	*
Capacity Building	*	*	*	*	*
Promotion and Implementation of Community Forestry		*			
Direct Access to Financing Mechanisms		*	*	*	

Source: Vallejo Larios based on information provided in the R-PP.

Note: PUS = Public sector (including municipalities); ECC = Ethnic and communal communities; PRS = Private sector; OSC = Organized civil society (including trade unions); and ACA= academia.

2.4 STRUCTURES FOR INVOLVING STAKEHOLDERS

This section discusses developments in the opportunities to participate in the REDD+ readiness in Honduras. The country has created various participatory structures to develop the proposal for initial funding from the FCPF and plans to create some relevant structures in the future when REDD+ readiness work begins.

The Inter-institutional Committee on Climate Change (CICC) was created in 2010 by Executive Decree PCM-022-2010 and is a permanent support body for SERNA's National Directorate on Climate Change (DNCC) at both the political and technical level. It serves as a discussion platform to generate political advocacy in a multidisciplinary and multisectoral manner, with the involvement of representatives from the private sector, civil society, academia, indigenous and Afro-Honduran peoples, and other sectors.

The CICC formed the Inter-institutional Technical Committee on Climate Change (CTICC) to implement its guidelines; propose, review, and make technical recommendations on plans, strategies, programs, and projects; and implement climate change actions. Products of the CTICC will be submitted for review and final approval by the CICC and later submitted for consideration by the Executive Power. The CTICC currently is composed of four thematic subcommittees that deal with air quality; agriculture and food security; water resources; and REDD+.

REDD+ Subcommittee

The REDD+ Subcommittee was created in 2010 and has acted as a platform for communication, dialogue, and training for REDD+. It promotes intersectoral dialogue and incorporation of “relevant stakeholders” directly related to the forest sector. In principle, the subcommittee meets every 2 months (Honduras R-PP).

In November 2013, SERNA published on its Web page a draft of the *Manual of Functions of the REDD+ Subcommittee*,²⁵ which will be coordinated and supervised under SERNA and ICF.

The objectives of the subcommittee include ensuring representativeness, dialogue, and consultation, both interinstitutionally and at the level of societal sectors; promoting and providing technical advice for defining public policy; and leading the development and monitoring of the National REDD+ Strategy. According to the draft manual, the highest decision-making body of the subcommittee is the **assembly**, which is composed of representatives of member entities. The **board of directors** will be the body responsible for implementing the subcommittee’s decisions and activities and is made up of nine members with a 1-year mandate, including:

- Three representatives of the government, from SERNA, the ICF, and another body to be selected from among the government parties represented;
- Four representatives of civil society organizations chosen by consensus among the organizations participating on the subcommittee, one of them representing private forest owners and agroforestry cooperatives;
- One representative of international cooperation organizations as an observer; and
- One representative of MNIACC as an observer.

The subcommittee will provide the CICC with regular information and will rely on the support of the regional development councils, which will liaise directly with stakeholders at the regional, departmental and local levels (Honduras R-PP).

To encourage participation and discussion by indigenous and Afro-Honduran peoples, the government and CONPAH agreed to create MNIACC, with its own political and technical structure and greater autonomy. Since the indigenous and Afro-Honduran peoples will have their own dialogue forum, a representative of that forum is expected to participate on the board of the REDD+ Subcommittee with a voice, but no vote. In this way, the MNIACC will be kept informed about the decisions made in the subcommittee, although it also is expected that these decisions will be officially communicated to the MNIACC so their position is known.

MNIACC

The MNIACC is a platform bringing together indigenous representative bodies and organizations in Honduras that will work in coordination with the REDD+ Subcommittee. According to the R-PP, it will be a key platform for channeling the REDD+ process in indigenous and Afro-Honduran areas and also will have a special auditor role. It is led by CONPAH and its federations. Although it will operate independently, it will coordinate with the CICC and the REDD+ Subcommittee. That coordination, which will take place in accordance with defined communication strategies, will be framed within the principles of good faith and mutual respect between the MNIACC and the REDD+ Subcommittee. There are plans to undertake the mapping of national indigenous institutions and organizations that are not members of MNIACC to promote their inclusion, as well as to develop internal regulations for the MNIACC with the support of the UNDP. More details on the MNIACC are included in section 5.0.

The laws and regulations provide for additional structures, some that are currently in place, which also are expected to act as channels for participation in the national REDD+ process.

²⁵ Available at: <http://cambioclimaticohn.org/uploaded/content/category/657044609.pdf>, accessed September 24, 2014.

The National Plan and Country Vision have led to the creation of **regional development councils**, which according to the R-PP, are expected to serve as liaisons between the REDD+ Subcommittee and relevant local stakeholders. The councils, which are set up differently from the country's political divisions, follow up on and monitor the implementation of local plans and projects based on priorities identified by the communities. In doing so, they should apply mechanisms for coordination and communication with community organizations and the programs and projects implemented in each municipality. The councils should encourage the creation of thematic round tables at different levels (e.g., village, municipality, association of municipalities, region) to support reaching agreement on and identifying common problems, and encouraging the formation of working teams. Several thematic round tables have been set up, some of them specifically related to REDD+ implementation.

A complex issue related to these coordinating bodies is ensuring continuity and securing budget funds for the regional development councils. Since adoption of the National Plan and Country Vision, the annual operating budget has been developed in an integrated manner by region. This means that, a priori, no budget is allocated for the local/regional REDD+ platforms, but that allocations are made on a program basis.²⁶

The 2007 Forestry Law created **forest, protected areas and wildlife advisory councils** at the national, regional, departmental, and local levels as bodies for citizen participation, consultation, and support for the State Forest Administration. These councils include representatives of public institutions linked to the forestry sector as well as private sector and indigenous and Afro-Honduran organizations. These groups can make recommendations and propose initiatives for policies and actions relating to forest management in Honduras. At this time, it is difficult to measure the effectiveness of these councils because they are still in the early implementation phase.

The regional development and advisory councils could be used to channel participation into the REDD+ process, although there are both advantages and disadvantages to having them play this role.

Advantages and Disadvantages of Councils Becoming Actors in REDD+

Potential Actor	Advantage	Disadvantage
Regional Development Council	<ul style="list-style-type: none"> • Legally supported by national planning legislation (National Plan Law) • An institutional support framework (SEPLAN) 	<ul style="list-style-type: none"> • No specialty in REDD+ • Actions address different priorities and are not focused on forestry
Forest, Protected Areas and Wildlife Advisory Council	<ul style="list-style-type: none"> • Legally mandated for citizen participation, consultation, consensus-building, social control, and coordination of public and private sector actions in forestry activities • Operate at different territorial levels (national, departmental, municipal, and community) and are made up of high-level representatives of organizations involved in forest management • The National Advisory Council can present recommendations or initiatives on policies and actions for consensus-building, conflict resolution, mediation, and channeling complaints, as well as other forest-related actions 	<ul style="list-style-type: none"> • Complex organization and operation • Possibly a certain level of competition over interests and budget resources with other decentralized bodies created by different laws (e.g., regional development councils, water councils)

²⁶ Thus, the R-PP establishes that members of the REDD+ Subcommittee and the government will ensure that SEPLAN forms part of the Subcommittee in order to provide a budget for the thematic round tables linked to REDD+.

2.5 RECOMMENDATIONS

The main challenges implementing REDD+ in the country will face appear to be related primarily to two factors:

- The dispersion of laws and regulations (including overlaps, contradictions, and lack of access to certain legislation) and their low-/medium-level of implementation; and
- The difficult social realities related to land tenure and occupation, with a high level of informality, a variety of stakeholders in forest areas with competing land uses, and great inequality of economic power and political influence.

Policies and legal framework:

- Promote measures to revise or simplify the laws and policies that apply to REDD+. An integration analysis, or a prioritized selection of the laws that will apply based on their legal nature, would be instrumental in providing a clear picture of legal implementation.
- Harness REDD+ synergies to enhance land-use planning efforts—particularly relating to watersheds—that are promoted by the country's various instruments for development planning. Use planning as a tool for integrating land use and the responsibilities of government entities. Land-use planning could provide the basis for incorporating broader landscapes into REDD+ planning, taking into account decisions about future development projects and models.
- Continue reviewing in greater depth the legal factors that have had a positive or negative impact on specific experiences undertaken in PES and forest management schemes with the aim of gathering lessons learned that might be useful for REDD+. Lessons learned regarding how the issue of land tenure was addressed will be particularly valuable.

In the context of preparing for REDD+ implementation:

- With respect to the main stakeholders—including the government—fulfill the commitments, decisions, and agreements made with different sectors for the implementation of readiness efforts.
- Ensure that transparency mechanisms, such as the Web page and the publication of quarterly bulletins, are properly implemented and updated so that interested stakeholders can follow developments in the process. Apply the same principles to meetings of participatory bodies, such as the MNIACC and the REDD+ Subcommittee.
- Attempt to increase participation and involvement of government institutions that will support the process, including SEPLAN, SEFIN, and others participating on the subcommittee.
- Ensure increased participation of representatives of the infrastructure, energy, and hydropower sector to inform those who are developing the REDD+ Strategy for projects underway in the territory. With respect to permits and activities to be undertaken, it is essential to improve transparency to have a clearer picture of the projects that could affect REDD+ implementation, such as infrastructure and mining. The case of the World Bank-financed highway project and the Honduran hummingbird demonstrates that not only national institutions, but also international ones, are committed to supporting conservation and preservation activities in the country.
- Ensure that the participatory process also envisages the participation of vulnerable sectors—including women and youth—among the various stakeholders.
- Ensure that consideration of the possible avenues or alternatives that will be selected according to stakeholders' vision of REDD+ includes examination of their legal implications.
- Because REDD+ is a long process that will extend beyond the implementation of a particular initiative, the government has a key role to play in coordinating initiatives and efforts.
- Improve mechanisms for implementation and follow-up of policies; promote their unification and simplification since the large number and dispersion of related policies makes it difficult to keep track of them.
- Expand the training platform so that more people learn about REDD+.

3.0 LAND AND FOREST USE POLICY, LAW AND REGULATION

One of the main challenges REDD+ implementation will face in Honduras is the land tenure situation. Although the legal framework includes legislation linking ownership of forest resources with landownership, there are still various challenges from the point of view of both formal laws and regulations, and their application in the country. Land tenure in the country is characterized by a diverse mosaic of occupations and applicable laws. Because of the high level of irregular landownership, the country has adopted various laws intended to improve landownership regularization and is implementing a World Bank-financed program to promote land titling. In practice, the diversity of applicable legislation and institutions with responsibility for regularization makes it difficult to achieve the specified objectives. Overlaps and a lack of detailed provisions to ensure inter-institutional coordination for land titling, together with the absence of an entity or mechanism to oversee the functioning of these institutions, are important issues.

A number of laws govern natural resource ownership and the ownership of forest resources. With the adoption of the 1992 Agricultural Modernization Law, the ownership and management of forests was returned to the original landowner. In this way, forest areas—which can be either public or private—will in principle be managed by the landowner, who also will have the right to the benefits derived from those resources. In the case of public forest areas, usufruct and management contracts usually are established with the inhabitants or occupants of the areas, establishing the obligations and benefits of the parties. In general, the usufructuary can benefit from the exploitation of forest resource products.

The Agricultural Modernization Law also provides for management plans to be widely used as management tools with ICF approval. They can provide the basis for granting short-term permits and for certain other activities. The 2007 Forestry Law contains various incentives, including the goal of allocating 1 percent of the national GDP to a dedicated fund. However, in practice, the implementation of these incentives and of budget allocations for relevant funds has been quite limited. Since 1974, attempts have been made to include organized peasants in different ways in the management and use of the country's forest resources, with limited success. There are also various perverse incentives in sectoral legislation that act in opposition to the incentives and objectives of the Forestry Law.

The existence of various laws that leave open the possibility of expropriation despite the existence of firm property rights is another source of uncertainty when considering the implementation of REDD+ in Honduras. Surprisingly, for almost 20 years the conservation of natural forests was considered grounds for expropriation for agricultural reform purposes.

3.1 POLICIES, LAWS, AND REGULATIONS GOVERNING RESOURCE USE

3.1.1 Policies Governing Natural Resource and Forest Tenure

In line with the state's constitutional responsibility for regulating and ensuring the rational exploitation of natural resources (art. 145 and 340, National Constitution), the Forestry Law adopted in 2007 declared the rational and sustainable management of forest resources, protected areas, and wildlife to be a national priority

and in the public interest. The Forestry Law stipulates that the state shall ensure that policies and actions relating to agriculture, livestock, growing coffee, and human settlements are harmonized with the principles and objectives of this law (art. 6).

The state has a key role to play in the management of forest resources. In 1974, legislation was adopted that made all forests the property of the state. However, this role was clearly limited by the adoption of the 1992 Agricultural Modernization Law, which “returns” ownership of forest stands to the original owners with full ownership over the land (FAO 1999). Since then, the ownership of forest resources and classification of forests has been clearly associated with the ownership of the land where those resources are found.

With regard to forest resources, the Forestry Law provides a broad definition of forests and forest areas, which are governed by its scope of application with the exception of forest areas within urban boundaries, which are governed by municipal regulations (Forestry Law, art. 8, Forest Regulations, art. 92). For example, this law defines a forest as “a naturally occurring or planted plant association, at any stage of the natural life cycle, with a predominance of trees and shrubs or a combination thereof, of any size, with a canopy cover of more than ten percent... capable of producing timber, other forest products, environmental goods and services.”

Forest areas are defined as encompassing a broad range of lands populated with forest tree and/or shrub species “of any size, naturally occurring or from seeded or planted sources,” but also lands vulnerable to degradation, with a specified gradient (30 percent or higher) or particular composition, among other characteristics (art. 4). This broad understanding of forests and wide definition of forest areas to which the Forestry Law applies give this law a broad scope of application with respect to land.

The Forestry Law classifies forest areas into two types: **public** and **private** (art. 45). The classification is relevant in terms of who has the power to manage and receive the benefits of managing forest resources, and how that is done.

- **Public forest areas** are either state areas, belonging to the state, or ejidal areas, belonging to the municipalities. This includes public areas given in concession and protected areas.

- **Private forest areas** are owned by natural or legal persons under private law, including those purchased by the municipalities from private owners with duly authorized titles issued by the state and recorded in the Unified National Property Registry.

The Forestry Law establishes a generic recognition of the “right to forest areas” of indigenous and Afro-Honduran peoples in lands that they “traditionally own,” in accordance with ILO Convention 169.

According to the Forestry Law, forests can be managed either for production or for protection, as follows:

- Private or public production forests are of significant economic interest and suitable for cultivation and harvesting of timber or other environmental goods and services, which determines their preferential use (art. 63).
- Protection forests, whether public or private, are of significant importance for soil fixation or conservation; erosion prevention; protection of water resources or wetland areas; and conservation of climate, biodiversity, and nature in general (art. 63).

National Forest Areas

The ICF administers these areas and, in the performance of its duties, can:

- Grant or authorize exploitation rights through management contracts or contracts for the sale of standing timber; and
- Enter into community-based forest management contracts with communities or organized peasant groups living in forest areas, or with other beneficiaries.

The SSF, created by Honduras in 1974, attempted to include organized peasants in the management and use of the country's forest resources, ensuring their effective participation in the direct and indirect benefits of the forest and contributing to the improvement of living conditions in rural forest areas. The current Forestry Law states that the ICF should promote and strengthen the SSF as a means of including communities living in national forest areas in the management of forest resources. To this end, the law and its regulations state that regularization programs should preferably be carried out from a community forestry perspective (art. 127, Forestry Law; art. 131, Forest Regulations).²⁷

To benefit from community forestry, each group signs a contract with the State Forest Administration defining the obligations and rights in each case, although it is common for these contracts to follow a standard format. In theory, the benefits are shared equitably among the members of the group, but in practice it is clear that they work individually. However, some activities are usually carried out as a group, the most common ones being purchasing supplies, dealing with formalities, and marketing. These agreements benefit only the members of the group.

In state-owned forest areas, different ways were developed to provide the use of forest products to organized groups or settled communities through “usufruct and rights regularization agreements,” delegating rights and responsibilities for forest resource conservation using management practices appropriate to the type of forest, thus enabling the communities living in the forest areas to continue to benefit from them. In line with the objectives of the SSF, organized communities accredited by the ICF will have the preferential right to sign forest management contracts in these forests (art. 128).

Forest Management and Comanagement Contracts

Natural persons²⁸ and family groups who are beneficiaries of the regularization programs shall have recognized “right” to the plots or parcels of land they occupy. To this end, they will sign the relevant contracts with the ICF and be granted “the right of use of the plot or parcel, including the uses and other benefits allowed by the contract” (art. 132, Forest Regulations).

The agreements will cover the activities of conservation, protection, afforestation, reforestation, and exploitation, and will assign the signers the rights of use and enjoyment of forest products (art. 102, Forest Regulations).

According to the Forestry Law, before entering into these contracts, ownership of the area must first be legally regularized (arts. 51 and 77). Contracts for forest management or activities can be of short-, medium- and long-term duration. According to the law's regulations, long-term contracts will remain in force for up to one rotation period of coniferous or broadleaf species in areas with or without forest cover (art. 189, Forest Regulations).

Any forest use or management agreement in either a public or private forest area must be carried out according to a **forest management plan** prepared by the landowner or the organization or community interested in managing the forest area in accordance with the procedures outlined in the forest regulations and presented to the ICF. The Statistical Yearbook of Forestry 2011 states that 55 management plans were approved for national, ejidal, and private lands, with an area of 5,245 ha under management and an annual

²⁷ According to the Forestry Law, community forestry is understood as the “harmonious and sustainable relationship between agroforestry communities or groups that live in forest areas and their environment, which is based, in the case of national forest areas, on multiple forest uses and the implementation by these communities or groups of protection activities and others related to the management of these areas, allowing them to benefit economically, environmentally and socially from their products, goods or services” (art. 131, Forest Regulations).

²⁸ From a legal perspective, a natural person is a human being, as opposed to a legal person, which may be a private (i.e., business entity or non-governmental organization) or public (i.e., government) organization.

allowable cut of 48,831 cubic meters (m³); in the same year, an additional 48 management plans were adjusted for an area of 18,575.98 ha under management and an annual allowable cut of 37,462 m³.²⁹

In addition, the ICF shall grant the corresponding permits for certain specific activities related to the felling, exploitation, acquisition, processing, industrialization, transportation, exportation, importation, and burning of trees and forests. The beneficiary is committed to conserving the shape of the area and returning it to the state.

The law describes two types of contracts and agreements: community-based forest management contracts and comanagement contracts.

Community-Based Forest Management Contracts:

- Shall be entered into between the state, municipalities, and organized communities living in public forest areas for the sustainable management of the area, irrespective of whether it has forest cover or not.
- Will establish, among other things, the allocated area; duration; planned management activities; and rights to obtain the specified benefits from the activities of rational and sustainable timber logging, resin extraction, or extraction of other products as well as their sale and industrialization (art. 135, Forest Regulations).
- Contracts existing when the law came into force shall be honored and the obligations and liabilities of the parties shall be specified (arts. 458 and following of the Forest Regulations).

Comanagement Contracts:

- Imply shared management between the ICF and the beneficiary groups, preferably in protected areas.
- Agreement may be reached on incentives available to beneficiaries (art. 135 Forest Regulations).
- The contracts can be renewed, provided they have met their objectives. Likewise, the ICF has the power to terminate comanagement contracts early and without any liability on its part if the contract counterpart does not fulfill its shared responsibility.
- According to the Board of Comanaging NGOs of Protected Areas of Honduras (MOCAPH), in 2013, the National System of Protected Areas of Honduras included 35.7 percent of the Honduran territory converted into protected areas (3.9 million ha), of which 2.3 million ha are comanaged with NGOs (34), associations of municipalities (5), local governments and private companies (1), and academia (3). The board estimates that responsibilities are shared in the management of 50 protected areas (55 percent of the areas under comanagement).³⁰

Management or Usufruct Contracts

The review of a sample usufruct contract revealed a number of relevant factors that should be considered in implementing REDD+ in Honduras, since usufruct or forest management contracts between the state and different entities or settlements of communities are common.

The state “regularizes,” or claims the land as its property and provides its use to its occupants who, in their capacity as “usufructuaries,” have the rights of **possession, use, and enjoyment**. The contract can allow the usufructuary to have access to commercial and noncommercial forest uses within the protected area following field inspections and technical approval from the ICF based on the established **management plan**.

²⁹ Available at <http://www.icf.gob.hn/files/tramites/Anuario%20Estad%C3%ADstico%20Forestal%202011.pdf>, accessed September 26, 2014.

³⁰ Informe anual MOCAPH 2013, available at: <http://mocaph.files.wordpress.com/2012/11/informe-anual-mocaph-2013.pdf>, accessed September 30, 2014.

The standard contract provides for the usufructuary to use the land and its resources in accordance with the technical provisions of the management plan for the protected area and to comply with legislation on the use and protection of natural resources.

The products obtained from the economic activities shall be the absolute property of the usufructuary, who can use or sell them in whatever way best suits his interests, with the understanding that the natural resources must be used and maintained in a sustainable manner (i.e., in carrying out productive activities, the usufructuary will apply best practices in harmony with nature—prioritizing organic production—and will follow processes that ensure the protection, restoration, and conservation of the forest area). The standard contract prohibits usufructuaries who have forest areas on their land from making changes in land use.

The agreement also stipulates that “the rights to use and enjoyment of the land stated in this contract, as well as of (...) the **goods and services produced**, can be an **object of market transactions by the usufructuary who shall receive the benefits derived from them**; similarly, they can be transferred without remuneration, provided that **prior authorization has been obtained from the ICF**, on the understanding that the “**bare ownership of the land shall always belong to the State**.” Implementation of this type of contract on state-owned lands would allow beneficiaries and people living on these lands to enjoy the benefits from the implementation of REDD+, regardless of whether the state retains formal ownership of the land. Ensuring that the benefits reach the forest manager is, therefore, fundamental to the successful operation of REDD+.

The usufruct contract specifies an initial duration of **30 years and is renewable** (automatically if both parties are silent) for the same period. However, the usufructuary can transfer his rights, after offering them to the state, to another individual. This transfer is conducted before the ICF, since the new usufructuary will be accountable to that entity. In case of death, the descendants can succeed to these rights for the remainder of the contract period. With respect to registration, in principle, the contract must be registered in the CPPFI and in the corresponding Registry of Real Estate and Commercial Property.

In addition to being exempt from property taxes and having the right to receive technical assistance from the ICF, the usufructuary can apply for the incentives described in the Forestry Law. The contract is expected to be reviewed every 5 years by the parties.

Forest Exploitation in National Forests

In national forests, the ICF can grant or authorize uses by third parties through the above-mentioned management contracts or contracts for the sale of standing timber. Holders of exploitation titles will be responsible for implementing activities for the protection and improvement of forest areas (art. 78, Forestry Law, and art. 99, Forest Regulations).

Forest uses must be carried out using silvicultural techniques that ensure the perpetuation of the resources and efficiency of their usage. These techniques must be compatible with the conservation of ecosystems, biodiversity, and genetic resources, and contribute to the reduction of environmental and anthropogenic vulnerability (art. 4, Forestry Law).

Exploitation in Protected Areas

The Forestry Law states that neither permits nor licenses shall be granted for the exploitation of resources in “core zones of protected areas.” Only in buffer zones can economic activities be authorized in accordance with management or operating plans previously approved by the ICF (art. 109).

This law also prohibits new settlements in protected areas. People who were living in core zones ten years before the entry into force of the Forestry Law or the declaration of the area will be resettled in the buffer zone of the protected area, or in areas with the same or better conditions (art. 133). Failure to comply with this provision will result in relocation.

Exploitation in Private Forest Areas

The owners of private forest areas are responsible for forest area administration; they must fulfill the obligations of protection and reforestation, and will have the right to receive the benefits derived from their management and use (art. 49, Forestry Law, and art. 101, Forest Regulations). However, a management plan

must be submitted to and approved by the ICF. In this case, the responsibility for the correct implementation of the activities in the management plan lies with the owner (art. 89, Forestry Law). Since 1992, the original landowners have returned to harvesting, forest protection, and management activities on their land. However, the prerequisite of clarifying land tenure prior to exploitation has caused difficulties since the tenure situation varies considerably, and there is a particular lack of clarity relating to coniferous forests. Also the costs of transferring landownership are described as high.

Indigenous Peoples and Rights Relating to Forest Resources

The Forestry Law generically recognizes the “right of indigenous and Afro-Honduran peoples over forest areas on land traditionally owned by them, in accordance with national laws and Convention 169 of the International Labor Organization (ILO)” (art. 45). According to this Convention 169, if activities are implemented that affect these areas, the communities have the right to participate, must be consulted, and, in the event of possible resettlements of the communities, must have their right to free prior and informed consent respected. This recognition also is found in other aspects of this law; for example, indigenous and Afro-Honduran peoples are exempted from the prohibition against new settlements in protected areas (art. 133).

The Property Institute (IP) will be responsible for regularizing forest areas traditionally owned by indigenous or Afro-Honduran peoples in accordance with the Property Law and, “if necessary,” in coordination with the ICF (Forest Regulations, art. 106).

Status of Forestry and Implementation of Laws and Regulations

Although deforestation figures have been inconsistent, it is estimated that Honduras has an approximate annual deforestation rate of 58,000 ha (Vallejo Larios 2011, p. 16). Various causes of this deforestation are related to the existing legal framework. The main causes cited include the lack of clarity on land tenure, a deficient system of sanctions, and the lack of implementation of incentive measures for forest conservation.

With regard to land tenure, although the legal framework provides certain clarity regarding different ways of obtaining ownership, in practice there are still multiple forms of land occupation and a high degree of informality. This complicates benefit sharing and makes it difficult to ensure sustainable practices and the stability and security of the occupants of the land.

Although forest laws and regulations provide for the application of sanctions and penalties for failure to comply with their provisions—and even criminalize behaviors that were previously considered only minor offenses—there continues to be a high level of illegality in forest activities because of a lack of specialized institutions, overlap, a lack of coordination between the existing competent institutions, institutional weakness of the ICF, a high level of corruption in the forest sector (e.g., among control authorities), and the lack of a culture of reporting illegal forest activities (Vallejo Larios 2011). The continuation of these activities has led to the deterioration of forest ecosystems as well as to losses caused by forest fires, pests, and disease (Vallejo 2013b).

The Forestry Law provides for the implementation of actions to combat these difficulties—including a national strategy for the control of illegal logging and transportation of forest products and the creation of a forest guard unit—but there are serious challenges to implementing those actions. These difficulties hinder the ability to ensure the legality of harvested timber and are related to an overlap of responsibilities for supervising and monitoring compliance. One example of this overlap is the creation of the Specialized Ecosystem and Environment Unit in the armed forces, with duties very similar to those the Forestry Law gives to the Specialized Forest Guard Unit under the authority of the ICF (through Decree 41, adopted on June 27, 2011) (Vallejo 2011).

Moreover, although the ICF is responsible for dealing with forest infractions classed as minor offenses in the forest legislation, that authority has stated that, for various reasons, it has been unable to exercise that power (Vallejo 2013b). Likewise, the implementation of the numerous sectoral policies existing in the country (e.g.,

the strategy against illegal logging) has been limited due lack of budgetary allocations and institutional capacities (Vallejo 2011).

Other problems identified as causes of deforestation include the inability of the SSF groups to manage or control their assigned area, lack of resources to develop the management plan, pay technical staff, purchase equipment, pay guarantees, etc (Vallejo 2011). Thus, those groups end up making commitments with sawmills or processing industries whose interest lies in extracting the highest volume of high-quality trees, leading to further deterioration of the resource, the expansion of the agricultural frontier, and social and economic inequality in forest areas. (Vallejo 2011)

3.1.2 Policies Related to Incentives

The legal framework contains few incentives for maintaining the forest cover; those that exist are described in this section, followed by an overview of some of the various perverse incentives for deforestation in different regulatory instruments (e.g., legislation such as the Constitution and the Civil Code). It is essential to identify and eliminate these perverse incentives that have contributed to creating a culture of deforestation as a necessary activity. To this end, it is recommended that Vallejo Larios's analysis of the causes of deforestation be examined in detail.

Incentives for Forest Activities

The Honduran legal framework contains various provisions intended to promote social inclusion in forest management. The legal framework also contains numerous provisions for the establishment of schemes for compensation and PES, which, among other things, promote the maintenance of forest resources in relation to water resources. Although the Water Law contains various provisions regarding PESs, there are details in the regulations for the law that must be resolved for further specific incentives to be offered to owners or usufructuaries of lands near bodies of water.

The Forestry Law also contains a considerable number of provisions to encourage rational management of forest resources, including the establishment of the Fund for Forestry Reinvestment and Promotion of Plantations, and the Protected Areas and Wildlife Management Fund (Forestry Law, art. 35). According to this law, the Fund for Forestry Reinvestment and Promotion of Plantations would be constituted by 1 percent of the general budget of revenues and expenditures of the republic (Forestry Law, art. 37), although there is evidence that the goal is ambitious and difficult for the country to achieve.³¹ The special regulations for the fund were adopted through Agreement 011-2010. Both funds are to be managed by administrative boards. The Forestry Law assigns responsibility to the ICF for managing funds to promote the afforestation of deforested or degraded areas (art. 152).

In addition, the Forestry Law envisages that the ICF will provide a series of additional incentives for sustainable forest management, with the restriction that, to be eligible for the incentives, the area must have a minimum of 15 continuous ha (art. 153). These incentives include the following (art. 149):

- Free technical assistance;
- The possibility of harvesting some products for free (e.g., firewood, resins, oils and seeds) after fulfilling the contract with the ICF;
- The right to develop up to 50 percent of the land for commercial use in compensation for silviculture activities;
- A refund of 100 percent per year of the investment made in forest protection in national and ejidal areas in young or regenerating forests;

³¹ Ramón Álvarez, *Los incentivos forestales, realidades o falsas promesas?*, La Tribuna, September 18, 2012. Accessed at <http://www.latribuna.hn/2012/09/18/los-incentivos-forestales-realidad-o-falsas-promesas/>.

- A refund of up to 50 percent of the investment in reforestation of deforested private areas not exploited under the management plan;
- Compensation for environmental services in relevant protection areas and watersheds;
- Receipt of a sustainable management certificate;
- A deduction of the investment in afforestation and reforestation projects from net taxable income; and
- Exemption from property tax in core areas of reserves, buffer zones, etc. as an incentive for protecting these lands (art. 151).

In general, although the legal framework includes various incentives, their implementation has been limited and has not produced sufficient results. “A dramatic case of this is the Law for Incentives for Afforestation, Reforestation and Forest Protection, which was adopted in 1993. Despite it containing approximately 20 different incentives to promote the involvement of the private sector in afforestation and forest protection activities, no project in any part of the country was known to have received the benefits of this law” (Vallejo 2011, p. 34).

Perverse Incentives for Deforestation: Uncultivated Areas and “Social Function” of Land Use

According to the Constitution, private property is guaranteed in its broadest concept as a social function (art. 103). The state also has made successive efforts to provide lands to peasants, and various agrarian reform laws and regulations have been adopted. Although it has been clarified in recent decades that rural lands suitable for farming or livestock use are those that will be used for agrarian reform, historically this has not been the case: Forest land was converted into land for agricultural purposes. For example, the Agrarian Reform Law required that either 90 percent of the land granted be dedicated to agricultural use, or it would be subject to expropriation. For almost 20 years, the conservation of natural forests was considered grounds for expropriation for agricultural reform purposes. Thus, various land titling initiatives benefited the agricultural and livestock sector at the expense of the forest sector until 1992, encouraging other activities such as growing coffee, shrimp farming, and production of palm oil.

Currently, art. 7 of the Forestry Law stipulates that forest areas shall not be considered uncultivated or idle land, be expropriated for Agrarian Reform purposes, or be subject to titling, “except as provided in this regard in (...) the Law of Municipalities, (...) the Land-Use Planning Law (...), the Property Law, and the Forestry Law.” In other words, despite the prohibition against titling and agrarian reform in forest areas, the Forestry Law allows for the coexistence of various pieces of legislation that permit titling in certain cases, including the Law of Municipalities, the Land-Use Planning Law, the Property Law, and the Coffee Growers Protection Law. Thus, for example, legislation on coffee stipulates that “Lands dedicated to coffee cultivation shall not be expropriable, regardless of their (...) suitability or condition”... (art. 4, Coffee Enterprise Protection Law, Decree 78 of 1981). Moreover, “those who possess or occupy national land cultivated with coffee may request that the INA grant them full ownership”... (art. 6, Coffee Enterprise Protection Law). The 2004 Property Law also stipulated that its regulatory procedures would not apply in areas subject to special regimes, including national forests, protected areas, and national parks (art. 71).

National regulations that help interpret the law provide a way to prevent the titling or expropriation of lands that have maintained forest cover; however, they require clarification to be effectively applied for this purpose. As Vallejo points out, the harmonization of these regulations and consideration of their potential impact in terms of expropriation or titling, and of the possibility of lands dedicated to forest activities being expropriated due to their consideration as idle, requires further clarification (Vallejo 2013a).

Incentives for Activities that Promote Changes in Forest Land Use

There are numerous incentives for activities that compete with forest conservation. In the past, those incentives included World Bank loans for livestock rearing and transforming the country into an agricultural

and livestock economy. As Vallejo explains in detail, there are incentives for livestock production, coffee cultivation, and recently for the cultivation of oil palm, that promote land-use change (Vallejo 2011).

Incentives for logging also have been identified in emergency laws, for example, to deal with the aftermath of Hurricane Mitch in November 1998. Amendments to the Forestry Law allowed the use of trees felled by rain for the construction of local housing, a provision that remained in force for at least 7 years (Vallejo 2013a).

The fact that subsoil resources are the property of the state and that it can allow their exploitation under concession, as well as authorize the concessionaire to establish easements on third-party lands as necessary for the rational use of the concession (art. 23, General Mining Law) is an obvious risk for REDD+. A minimum period of sustainability of the forests participating in REDD+ must somehow be ensured.

3.2 TENURE REGIMES

The origin of the land tenure regime in Honduras goes back to the time of the conquest of the country, when the Spanish crown initially recognized three types of ownership provided to municipalities for their future expansion: royal title for Spaniards; some Indian titles; and communal or ejidal title. The diversity of land distribution reforms and initiatives, including an important liberal reform at the start of the 20th century, gave rise to an uneven structure of land distribution, with a high degree of concentration in the hands of a few (“latifundios”). However, since 1940, demands for the social distribution of land have gained momentum, including the peasant movement and the demand of indigenous peoples for land titling and the recognition of their territories. Thus, in 1961, INA was created with the mission of leading a process of agrarian reform aimed primarily at regularizing the landownership of small producers. While this development contributed in some measure to providing land to peasants, it also led to a proliferation of minifundios with no more than 1 ha of land (Santos Zelaya 2008). The result is that approximately 70 percent of peasant farmers have 10 percent of the country’s land in minifundios, while 1 percent of the farmers possess 25 percent of privately owned lands in latifundios (USAID 2010). However, there are no reliable statistics in this regard, since the last population census dates back to 2001. There are initiatives to develop a cadaster of forest areas in six of the country’s departments, which might make it possible to obtain that information for those lands in the future.

Another factor limiting the reliability of statistics on forests is migration in the areas, as migration has increased significantly in recent years for different reasons, including displacement of populations because of drug trafficking or megaprojects, lack of work, changes in the frequency of rainfall, and insecurity.

The Constitution recognizes agrarian reform as the comprehensive process of transformation of the agrarian structure of the country, intended to replace the latifundio and minifundio with a system of ownership, secure tenure, and land use to ensure social justice in the countryside and increase the production and productivity of the agricultural and livestock sector (art. 344).

Currently there is no real national land policy, but sectoral policies have been developed to reform the agricultural sector and forest use and exploitation, and with the introduction of the Property Law in 2004, massive processes were implemented for the regularization of informal property in urban areas (Cáceres 2014). To understand the characteristics of land tenure in Honduras, it is necessary to examine the provisions of the remaining sectoral regulations.

The following table shows this sectoral relationship with respect to the regularization of land tenure and existing institutions.

Laws Applied by Land-Related Public Institutions

Institution	Relevant Laws	Role in Land Matters
Property Institute (IP)	Property Law and its regulations; Forced Expropriation Law	Regularization of lands under all types of tenure

National Agrarian Institute (INA)	Agrarian Reform Law; Forced Expropriation Law	Titling of national lands and rural ejidos to agrarian reform beneficiaries and indigenous peoples <ul style="list-style-type: none"> – titling for ethnic communities – resolution of tenure conflicts in rural areas
National Institute of Conservation and Forestry Development, Protected Areas and Wildlife (ICF)	Forestry Law; laws for the creation of protected areas	Regularization of national forest lands, and participation in the process of granting titles to indigenous peoples <ul style="list-style-type: none"> -Maintains the Catalogue of Public Forest Heritage - Declares and demarcates protected areas - Intervenes in cases where land titles to national forest lands are found to have been irregularly issued to private individuals, or to pass a resolution declaring the recovery of the land in the absence of titles to the area.
Municipalities	Law of Municipalities, its reforms and regulations	Granting title to third parties over urban land belonging to the municipality Using and administering municipal lands, exercising ownership over rural land suitable for forestry Regulation of forested areas within urban perimeters
Technical Secretariat for Planning and External Cooperation (SEPLAN)	Land-Use Planning Law; National Plan Law	Carries out the planning duties derived from the Land-Use Planning Law

Source: Adapted from Cáceres 2014 by M. Vallejo and E. Recio

Challenges of Land Tenure in Honduras: Processes and Programs for Land Titling and Clarification of Immovable Property Rights in Honduras

Land tenure in Honduras poses various challenges for REDD+ implementation, including a high level of informality. According to information from the regularization staff of the IP, it has been estimated that up to 80 percent of land claims in rural areas and 30 percent in urban areas are based on private documents, transfers without deeds, or even on mere possession (LGAF 2014).

In an effort to improve this situation, the Property Law was adopted in 2004. Although the aims of this Law are to improve the administration of property, there have been various allegations of difficulties and irregularities in its implementation³². In addition, several property titling processes have been created and programs have been initiated to help strengthen them. The report “Achievements of the INA 2010-2012” reports the issuance of 432 property titles for the agrarian reform sector and 14 intercommunity property titles to indigenous and Afro-Honduran peoples, which represent a very small percentage of pending applications (Cáceres, 2014, p. 154).

Various laws contain provisions relating to the regularization of property rights. The main ones are those pertaining to Agrarian Reform (Agricultural Modernization Law of 1992), the National Property Regulation Program (2004 Property Law and its Regulations), and the Special National Forest Land Regularization process (Forestry Law). The Law of Municipalities (Decree 134-90) also includes provisions related to

³² See: Espantosa Corrupción en Instituto de la Propiedad, August 8, 2014, El Heraldo, accessed at: <http://www.elheraldo.hn/pais/711265-331/honduras-espantosa-corrupci%C3%B3n-en-el-instituto-de-la-propiedad>.

immovable property owned by municipalities. A summary of some relevant provisions from the aforementioned programs is presented below to help understand their main characteristics.

“National Property Regulation Program” (Property Law and Regulations)

Scope	<p>Movable, immovable, commercial and intellectual property, rights <i>in rem</i> and other rights (art. 2).</p> <p>The Program implements the process of regularization of immovable property at the national level (art. 16).</p> <p>Generally speaking, the regularization process stipulated in the Property Law applies to all types of land in general.</p>
Cases to which it applies	<p>- (art.73) regularization, ex-officio or at the request of one of the parties, for:</p> <p>a. <u>private</u> lands:</p> <ul style="list-style-type: none"> - with landholders lacking a recordable document - in dispute between private individuals where human settlements are found - whose holders meet the requirements to acquire them by prescription <p>b. land without a defined legal status, with human settlements</p> <p>c. ejidal land</p> <p>d. national rural land of up to 25 ha held by natural persons</p> <p>e. untitled land held by ethnic groups</p> <p>f. Government land without human settlements</p>
Requirements	Depending on the type of land, the requirements of the relevant regulations will apply.
Powers it confers	<p>Regularization process is aimed at gaining recognition of full ownership of real property. The process (art. 72) will consist of the following stages:</p> <ol style="list-style-type: none"> 1. Declaration of improperly registered land; 2. Declaration of regularization; 3. Conducting of a Census; 4. Appointment of facilitators; 5. Definition of the form of title – whether individual, collective or mixed – by the benefitting community; 6. Application of regularization mechanisms; 7. Payment of compensation in the case of expropriation; and 8. Titling and registration.
Expropriation powers	Expropriation may proceed in the event of disagreement between private individuals over the ownership of a piece of land, according to articles 77 and 78 of this Law. This must be declared by a Decree issued by the Executive Power in a Council of Ministers and it must specify the registered liens.

Agrarian Reform

The agrarian reform process, after various amendments and regulations, is now organized with the following characteristics, in accordance with the Agricultural Modernization Law adopted in 1992.

Agrarian Reform: Land Titling Program, applicable to rural lands with agricultural potential (Agricultural Modernization Law), and previous applicable regulations

Scope	<p>Agricultural property or rural land located outside urban perimeters and suitable for agricultural or livestock use.</p> <p>Applies to the presentation of agricultural projects generating a certain investment and minimum profits (art. 2).</p>
-------	---

Cases to which it applies	<p>Art. 6: The following will be dedicated to Agrarian Reform:</p> <ul style="list-style-type: none"> a) Lands expropriated under this Law; b) National and rural ejido lands (with the exception of protected areas, riverbeds, etc. in accordance with art. 13); c) Rural lands of legal persons under domestic public law; d) Rural lands transferred to the INA or the state in various ways; and e) Lands that are developed through direct action by the state. <p>(art. 23) Privately owned rural lands on which peasant settlements have been made and exist in accordance with Decree-Law 8 of 1972.</p> <p>(art. 15) The INA shall require the return of all rural, national or ejidal lands illegally held by private individuals, except for those who can prove that they have occupied, on their own behalf and in a peaceful manner, national or ejidal lands subject to exploitation for at least three years. These individuals shall be entitled to be sold the respective area, not to exceed 200 ha (except in exceptional cases authorized by SERNA).</p> <p>This law excludes people who own one or more rural properties, and people who deforest lands suitable for forestry to convert them to agricultural uses following the entry into force of this Law.</p>
Requirements	<p>Participation requires that the applicant meet the following conditions (art. 79):</p> <ul style="list-style-type: none"> - be Honduran; - usually works in agriculture and resides in a rural area; and - not be the owner of agricultural land or of a land area of less than one family agricultural unit. <p>Land may be granted to natural or legal persons, including associative peasant enterprises and cooperatives with legal personality.</p>
Powers it confers	<p>It grants lands for valuable consideration. This grant can be paid back over up to twenty years, and the land is encumbered by a first mortgage in the amount of the grant (art. 659).</p> <p>Disposition: (art. 93)</p> <ul style="list-style-type: none"> - if there are outstanding obligations, they may be assigned to others who meet the requirements to be beneficiaries of the Agrarian Reform, who shall assume the obligations and also be transferred the mortgage lien. <p>If the grant amount has been paid, the property may be disposed of.</p>
Powers of expropriation and reallocation	<p>Expropriation and reallocation:</p> <p>Art. 25: The part of the land that exceeds the size indicated in art. 25 shall be expropriated, whether or not it forms a single unit, wherever it is located in the national territory.</p> <p>Art. 34: To eradicate the minifundio (a plot of less than 1 ha), the necessary land will be expropriated to be regrouped and granted preferentially to the former owners who “have made best use of it and show the greatest capacity for farm work.”</p> <p>Art. 36: Lands that are occupied by villages or hamlets when this Law takes effect, when this is not due to a contractual employment link between the residents and the owner, shall be expropriated and granted to the respective community.</p> <p>Art. 51: For the expropriation of privately owned rural lands suitable for agricultural or livestock use, they will be considered not to be used in harmony with social function when they:</p> <ul style="list-style-type: none"> - exceed the areas established in art. 25 (are latifundios based on their size and location); or - are uncultivated or idle for more than 18 consecutive months (not applicable to forest areas).

	Lands granted but which are not utilized due to causes charged to the awarded shall be reallocated to other beneficiaries.
--	--

	The expropriation procedure is described in Title III, Chapter I of the law.
--	--

Special Regularization of National Forest Lands and Forest Management Agreements

Despite the existence in the Honduran legal framework of a number of entities with the power to grant land titles, the Forestry Law and its regulations give the ICF powers to title lands with forests in the name of the Honduran State, an important role considering the high percentage of forest lands in the country. The law sets out various provisions for the ex-officio recovery of state-owned lands by the ICF through the so-called Special National Forest Land Regularization process.

The scope of application of the Forestry Law encompasses forest areas that are suitable for forestry, so it is extremely important to identify those lands which, for the purpose of implementing the laws, are considered suitable for forestry (within the scope of application of the Forestry Law) or to have agricultural potential (within the scope of regulations on Agrarian Reform). This is fundamental to provide legal certainty for the owners about the applicable laws and regulations. The Forestry Law stipulates that until a land classification system is adopted at the national level³³, a series of key principles will be applied to confirm whether lands are suitable for forestry, regardless of the existence or not of forest cover.

A priori, the law establishes criteria that consider the following as forest areas:

1. Lands populated with forest tree and/or shrub species of any size, naturally occurring or from seeded or planted sources;
2. Rural lands with natural forest, covered or not by vegetation, which due to their structural, fertility, climate, and slope conditions are vulnerable to degradation and are therefore not suitable for agricultural and livestock uses, and should be subjected to afforestation, reforestation and other forestry actions, including the following:
 - All land, with or without forest cover, with a slope of thirty percent (30 percent) or greater;
 - Land with or without forest cover with a slope of less than thirty percent (30 percent) whose soils have a sandy texture and a depth of twenty (20) centimeters or less;
 - Land with a stoniness volume of fifteen percent (15 percent) or more with the presence of rocky outcrops;
 - Land flooded by tides or with the presence of hardened layers in the subsoil or with impermeable bedrock; and,
 - Flat land with sandy-textured topsoil to a depth of thirty (30) centimeters.
3. Land associated with bodies of brackish, fresh, or sea water, populated by mangroves or other species with similar characteristics that grow in wetlands.

The procedure for “regularization” of national forest lands must respond to the priorities identified in the Forestry Law to guarantee the population’s access to and participation in the sustainable management of public forest resources, ensuring that the generation of economic, social, and environmental benefits is based on principles of equity (arts. 2 and 68).

The regularization process seeks to demarcate national forest lands, recovering *ex-officio* their possession when they have been impacted and used by third parties and declaring state ownership of them. Additionally, the laws and regulations also aim to identify the communities located in national forest areas in order to regularize their occupation and incorporate them through contracts for community-based forest management or co-management (Forest Regulations, article 102). These regulatory processes may also be carried out in the core zones of protected areas, settling or re-settling the communities in the respective buffer zone or in other areas with the “same or better conditions” (Forest Regulations, art. 105).

According to the law, it is also possible for the ICF, in the process of regularizing national forest areas, to decide to “fully maintain the state’s possession of the forest areas it owns, exercising vigilance to prevent occupation, segregation or other illegal acts of ownership” (art. 99, Forest Regulations). While this provision

³³ The Forestry Law requires that the ICF update the “National Forest Inventory and Biodiversity Inventory,” for which work is reportedly now under way.

could facilitate the eviction of communities with a long history of living in the forest, it should be considered in the context of the Forestry Law and the country's track record of promoting community forestry. For four decades, Honduras has introduced provisions to involve or integrate forest dwellers in administering and managing forest areas.

Regularization of Forest Areas (Forestry Law)

Scope	Forest areas: lands populated with forest tree and/or shrub species "of any size, naturally occurring or from seeded or planted sources," as well as lands vulnerable to degradation, with a certain slope (30 percent or more) or a certain composition, among other characteristics (art. 4). Exceptions to this are forest areas within urban boundaries, which are governed by municipal regulations (Forest Regulations, art. 92)
Cases to which it applies	<p>National forest areas subject to titling in favor of the state (art. 46) are all forest lands within the state's territorial boundaries that have no other owner, including: those not previously titled to third parties and forest lands over which it exercises or has exercised acts of ownership, unless they are shown to be privately owned. It also applies to forest lands purchased by the state or any of its institutions.</p> <p>The process is intended to lead "to the recovery, delimitation, titling, registration and demarcation of national lands suitable for forestry in favor of the state; as well as to provide mechanisms for granting and assigning their use, enjoyment, conservation, management and exploitation, by entering into community-based management and co-management contracts" (art. 51, Forestry Law).</p>
Requirements	<p>The Forestry Law establishes that beneficiaries of regularization must (art. 58):</p> <ul style="list-style-type: none"> - be Honduran by birth; - have occupied or worked the land in a direct, peaceful and uninterrupted manner for more than three (3) years from the entry into force of the Forestry Law; - not own land located within the national territory, either individually or communally; and - not have been a beneficiary of the Agrarian Reform. <p>The following may be beneficiaries of regularization (art. 57, Forestry Law):</p> <ul style="list-style-type: none"> - citizens who in their own name occupy and use national forest areas; - a family group which in its own name occupies and utilizes national forest areas; - legally established agroforestry groups participating in the SSF and the Community Forestry Program; - those who sign forest management or co-management agreements or contracts with the ICF or municipalities to manage protected areas; and - those who sign forest harvesting contracts through the system of public auction of standing timber. <p>They shall also include (Regulations, art. 128):</p> <ul style="list-style-type: none"> - organized rural communities, cooperatives or community enterprises; and - ethnic groups living in the area. <p>The organized communities and cooperatives or community enterprises must have legal personality (Regulations, art. 130).</p>
Powers it confers	In cases where lands are declared national forest areas, the state may arrange for management and co-management agreements with the communities through organizations with legal personality (see section on forest policies in this analysis).
Powers of expropriation and reallocation	<p>In principle, this Law does not establish provisions regarding expropriation, except in the case of protected areas.</p> <p>Art. 64: Owners with full title to forest areas that were declared protected areas before the law entered into force shall be treated according to the location of the property. In the event that negotiation is not successful, the state may proceed with the forced</p>

Titling by Municipal Entities

Finally, it is worth mentioning that the **Law of Municipalities** gives the municipalities the power to grant titles to neighbors of their jurisdiction over lands owned by the municipalities, if they are not suitable for forestry or protected areas.

3.2.1 Honduras Land Administration Program (PATH)

Currently, the state is implementing the Honduras Land Administration Program (PATH II), a program attached to the IP and funded by the World Bank, which will be implemented over 18 years for approximately USD 200 million to strengthen property rights in the country.

The objectives of PATH II include:

- 75 percent of the total of approximately 2.2 million parcels of land existing in the country will be surveyed and registered in the Unified Registry System (SURE);
- more than half of the 298 municipalities in the country improve their capacities to provide cadastral services;
- all of the country's 24 Property Registries will be modernized;
- 60 percent of priority protected areas will be demarcated and will be implementing their management plans; and
- the program for the delimitation and titling of the Miskito communities will be completed.

The PATH manual states that the Government will not cause the involuntary physical displacement of people in any area under the influence of PATH, but instead will concentrate on the delimitation, demarcation, and legal characterization of the land. It will identify the occupants, communities, or indigenous peoples who occupy these lands so that they can be regularized and titled. In the case of occupants of public land (such as forest land or protected areas), "Certificates of Occupation" will be issued by the ICF.

Lands that cannot be titled are those that fall under a special regime (art. 70, Property Law), which are considered to be: 1) national forests; 2) protected areas; and 3) national parks (art. 71, Property Law). The applicable Special Laws will determine the manner in which real property in these areas can be regularized. Furthermore, State property for public use that cannot be acquired by any legal means includes streets, highways, parks, lakes, lagoons, seas, rivers, and beaches, which are for unrestricted use by all people (Civil Code, article 614; Law of Municipalities, article 14).

In addition, municipalities cannot title forest lands (art. 70, Law of Municipalities), and the INA has, in theory, prohibited the titling of lands in core zones of protected areas, both national and municipal, as well as in properties over which the municipalities have full ownership (art. 108, Law of Municipalities).

Within this legal framework, various regularization mechanisms may be applied under the program described in this law, including: regularization through acquisitive or extinctive prescription, vesting of rights to ejido and national property, regularization of immovable property of indigenous peoples, and regularization based on public need³⁴. The presence of human settlements prior to January 1, 2007, is an essential requirement. If beneficial ownership rights to national or ejido real property have been granted and registered before January

³⁴ The latter is used to resolve land tenure conflicts when it is not possible to establish who is the legitimate owner of a property, due to various allegations of title deeds and/or to the ownership or validity of those property rights being in dispute, whether judicially or extrajudicially, by third parties outside these human settlements.

1, 1991, to individuals who, on the date of entry into force of the Property Law, were using, inhabiting, or holding possession of the property, either personally or by third parties on their behalf, they will acquire full ownership based on the beneficial ownership title originally granted, provided that the property is not in dispute and is not included in public use spaces or subject to expropriation for reasons of public utility.

3.2.2 Types of Land Tenure

The following table summarizes the content of some of the situations described in this section on land tenure:

Type of tenure	Land-related rights	Main conflicts related to land and forest tenure
STATE OWNERSHIP	<p>Use and enjoyment: by the state itself or the state may give the land in usufruct or lease it to third parties</p> <p>Disposal: Government lands (i.e. public uses, Inalienable Public Forest Heritage, national parks) cannot be disposed of.</p> <p>Administration: may enter into management contracts (in forest areas) to manage the areas based on a management plan (“usufruct contracts”)</p> <p>In ejido lands in urban areas, it is common for beneficial ownership (usufruct) to be given by the municipality to the occupants and usufructuaries, who may purchase the land pursuant to the applicable legislation (Law of Municipalities, Property Law).</p>	<ul style="list-style-type: none"> - Multiple and parallel problems; the adjudication process is quite long. - There is a high level of tenure informality: Many properties still belong to the state or to ejidos and have been inhabited for a long time, but there is no accurate information on occupants, titling, etc. - There are many cases of illegal possession and occupation of land. - The laws intended to prevent land-use changes are not strictly enforced. - Lands that have been given in usufruct by the forestry authority are later titled by the agrarian authority, creating conflicting rights.
STATE PROTECTED AREAS	<p>Restricted use in accordance with the management category and plan, should one exist</p> <p>The state may enter into co-management agreements to manage the areas based on a management plan.</p>	<ul style="list-style-type: none"> - lack of demarcation of boundaries and of lands occupied by inhabitants before the areas were created - difficulties and costs of developing management plans; difficulties in monitoring implementation - invasions and illegal logging - lack of funds for the implementation of management plans - They are vulnerable to contradictions from other laws, such as one that allows the titling of sites for coffee cultivation, mining concessions, and the establishment of renewable power generation plants.
PRIVATE OWNERSHIP	<p>Use, enjoyment and disposal: Important limitations for rural properties in terms of ensuring productivity and of the size of the lands people are allowed to own. In forest lands, management based on a forest management plan. Can be transferred by contract and may be affected by rights <i>in rem</i></p>	<ul style="list-style-type: none"> - invasion, occupation and illegal logging - the possibility of third parties establishing themselves on the land with the intent to own it; there are also various laws recognizing the rights of occupation, acquisitive prescription, and supplementary title - this causes legal uncertainty for those who decide to maintain forest cover

	(usufruct, easements) ³⁵ .	- irregular occupants of private rural properties with expectations of obtaining the land through the Agrarian Reform
BENEFICIARIES OF AGRARIAN REFORM	Use, enjoyment and disposal as in private ownership. Some restrictions apply to disposal and use during the period of payment of the land grant.	
INDIGENOUS AND AFRO-HONDURAN PEOPLES	Traditional use and enjoyment. Communal titles in some cases and without titles in others (but protected by ILO Convention 169).	- overlap with areas under a special regime (e.g. tourism areas, protected areas, ZEDEs) - conflicts with landowners, peasants, fishermen, loggers, cattle farmers - there are discrepancies with urban perimeters

State Ownership

To better understand the characteristics of State ownership of land, rights related to owning the land, as well as the rights of concessionaires and leasers, the following categories need to be considered:

National Lands³⁶: National lands refer to lands within the boundaries of the state, which belong to the state (art. 10, National Constitution). These include:

- **Forest Areas** (regulated by the Forestry Law and the Property Law)

National public forest areas include: areas owned by the state on behalf and in representation of the Nation, and forest lands located within the state's territorial boundaries that have no other owner. Thus, the consideration of what constitutes a national forest area is broad, unless the land is shown to be privately owned (art. 46). The Forest Regulations add that "forest areas whose use does not belong generally to the inhabitants of the nation are considered national State areas or government areas" (art. 91).

In principle, national forest areas cannot be titled to private individuals (art. 46, Forestry Law; art. 71, Property Law), and must therefore remain under public ownership. Therefore, they are outside the scope of any action for agrarian reform (art. 108, Forest Regulations). According to the Forestry Law, public forest areas registered in the Public Forest Heritage Registry shall be "unattachable, inalienable and imprescriptible" (art. 61). In 1972, to facilitate monitoring of public forest areas, a public registry was created containing the CPPFI, in which all state and ejido forest areas, including protected areas, must be registered. This is currently implemented under the ICF; however, its use is limited.

The state may enter into management and co-management contracts with communities occupying these areas. It may also authorize harvesting operations through the auction of standing timber.

- **National Non-Forested Rural Lands** (regulated by the Agrarian Reform Law and the Property Law)

All State lands suitable for agricultural or livestock use shall be used to carry out the Agrarian Reform and transferred to the INA (art. 12, Agricultural Modernization Law).

- **Ejido or Municipal Lands** (Law of Municipalities, Property Law)

³⁵ In civil law, rights *in rem* are linked to a thing rather than a person. Rights *in rem* include ownership, usufruct, easement, and mortgage, among others.

³⁶ National lands are those whose ownership belongs to the whole Nation; they also include lands located within the territorial boundaries which have no other owner (art. 618 of the Civil Code). Ejido lands are those belonging to the municipality or those acquired by it for the enjoyment of the inhabitants of the municipality.

Ejido or municipal lands are those belonging to the municipalities, either because they were originally transferred to the ejido by the state or because the municipalities acquired ownership for any reason. The prevailing mode of forest management on ejido lands is to delegate their use and management to third parties. Generally, the municipalities transfer forest management rights for a certain amount of money, especially to lumber industries, within the jurisdictional boundaries of the municipality.

Long kept on the margins of the market, ejido lands were commonly occupied for a long time by settlements, which, in some cases, may have received usufruct rights (USAID 2010). The Property Law presumes that any ownership rights granted by the municipalities over their ejidos before the entry into force of the Law of Municipalities were given in “beneficial ownership,” unless the original land grant title registered in the public registries indicates that the property was sold or granted in outright ownership (Art 76). The law defines “beneficial ownership” as the right of use or habitation.

- **Protected Areas**

Protected areas shall be declared by the Executive Power or the National Congress, through the ICF, either *ex officio* or at the request of municipal corporations or communities in public meetings. The declaration agreement is then approved by the National Congress (art. 65, Forestry Law). In principle, these areas are administered by the ICF, but, as mentioned at the beginning of this section, the ICF may enter into co-management contracts and agreements with third parties for the implementation of a management plan or specific activities contained in the plan (art. 99)³⁷.

There are several areas where inhabitants occupy both their core areas and buffer zones. With regard to the titling of these national forest areas, the Forestry Law allows that people who were living in the core areas ten years before the entry into force of the Forestry Law or the declaration of the area as protected may be resettled in the buffer zone of the area, or in areas with the same or better conditions (art. 133, Forestry Law).

In the case of communal titles issued to indigenous or Afro-Honduran communities, the law stipulates that “the management of protected areas located on the lands of these peoples shall be carried out jointly with the State, in accordance with land-use planning laws and regulations” determined on the “grounds of the general interest” (art. 101, Property Law).

Proper regularization of forest ownership is essential to avoid conflicts that can lead to deforestation or poor management of forest resources. Currently, the Forest Sector Modernization Project is leading a process for the cadastral surveying, regularization, and titling of national forest lands and ejidos with the aim of “enhancing the governance of the forest sector, protected areas and wildlife in Honduras.”

Concession and Leasing and Various Forms of Occupying State Property

There are various forms of occupation or possession of state property. Public lands are administered by the relevant State institutions and when, according to the existing legislation, they are not subject to being granted or titled to private owners, the state can enter into contracts for their administration. Typically the modalities used are concessions (mining rights, tourism projects, and special development regions), leasing (farms or other state properties), and usufruct or co-management agreements (on production forest lands or in buffer zones of protected areas).

In the case of forest lands, it is also necessary to have an approved management plan and the applicable administrative permits based on the activity carried out in the area.

Private Ownership

³⁷ Protected areas, regardless of their management category, are subject in the following order: to the special regime provided for in the Regional Agreements concerning this matter; to their specific Legislative Decrees in Title VI of the Law; to the provisions of the Forest Regulations; and to the provisions of the technical regulations approved by the ICF (art. 93 Forest Regulations).

The Honduran Constitution recognizes and guarantees the right to private property (arts. 61 and 103) without any limitations other than those based on need or public interest. Article 613 of the Honduran Civil Code recognizes the right of ownership as a right *in rem*,³⁸ and defines it as the “right to exclusively possess a thing and to enjoy and dispose of it without further limitations than those established by law or the will of the owner.” Landownership can be acquired in various ways, the most common being purchase and sale, donation (tradition), succession upon death, and acquisitive prescription. Property is acquired through the titling and transfer of the property and, although in some cases registration in the Registry is mandatory, registration does not constitute ownership (arts. 697 and following, and arts. 1575 and 1497, Civil Code).

Although the right of ownership or “*dominio pleno*” (full ownership) transfers all rights in the immovable property, including disposal, use and usufruct, the right of ownership encounters certain limitations in national law due to the social function of the property or other objectives of sectoral legislation. Some provisions related to this are:

- Natural or legal persons who are owners of rural properties and have not benefited from the Agrarian Reform are required to efficiently exploit their lands as set forth in the Agricultural Modernization Law (art. 41), but a breach of this will result in the land being expropriated at the beginning of the fourth year after this Law was enacted.
- Legal persons owning rural properties will have some additional obligations, including the following: They cannot own rural land exceeding the limits defined as a *latifundio*, as defined by art. 25 of the amended Agricultural Modernization Law (except by special authorization of the Executive Branch); they must, among other things, keep a Registry of Partners, indicating their equity interest or the number and nominal value of their shares; and keep the land, bodies of water, and other renewable natural resources in a good state of conservation.

Creation of Private Reserves

At the owner’s initiative, private natural reserves may be established, and must be certified as such by the ICF (art. 66, Forestry Law).

Expropriation of Private Property by the State for the Creation of Protected Areas

According to the Forestry Law, the declaration of a Forest Area as a Protected Area does not prejudice any condition of ownership or possession. However, it subjects those with rights of full ownership, possession, use or usufruct to such restrictions, limitations, or obligations as may be necessary to achieve the public utility purposes leading to its declaration and resulting from the corresponding management plans (art. 64, Forestry Law). Thus, owners with full title to forest areas that were declared Protected Areas before the entry into force of the Forestry Law shall be treated according to the location of the property. If they are in the buffer zone or the core area, a legal conservation easement can be established, or they can negotiate compensation for the use of environmental goods and services when the normal use of the land is affected by the declaration of Protected Area. However, if the negotiation between the state and the owner is not successful, the state may **proceed with the forced expropriation** of the property, after payment of assessed compensation.

Communal ownership: participation by associations, cooperatives and other actors

Honduran legislation actively promotes, particularly through agrarian reform, the participation of peasant cooperatives and producer associations in land management and agricultural production. Land is granted communally for agrarian reform purposes, and the lands of indigenous peoples are held in full community

³⁸ Rights in rem are any rights that a person has in connection with a given object, whether movable or immovable, which establish a direct relationship between a person and an object; examples include dominion or ownership, inheritance, usufruct, use or habitation, occupation, easements, pledges and mortgages. Manual de Regulación del PATH, available at: <http://www.path.hn/path/images/Documentos/Manual-operativo/Anexo-I-Manual-regulacion.pdf>.

title, with restrictions on their sale, the creation of liens (except in favor of State lending institutions), the transfer of land for use by third parties, and the abandonment of land, among other things (art. 106, Agricultural Modernization Law). In this context, cooperatives and associations have been broadly regulated by the laws and regulations (Decree 65-87, Cooperatives Law of Honduras, reformed by Decree 174-2013 on September 1, 2013).

Acquiring Property by Occupation and Possession

The occupation of private land may take different forms. The different regulations contemplate cases in which the occupation of public land provides its occupants with access to certain rights, without prejudice to the regular procedures for acquisitive prescription by possession of the land described below.

- Occupation for more than **five (5) years of an ejido or municipal plot** will be equated to **beneficial ownership**, provided that it is not a public use space or subject to expropriation for reasons of public utility (art. 74-A of the Property Law). Thus, individuals who do not have beneficial ownership registered before 1991, but who have been in possession of their property on ejido lands for more than 5 years, shall have the right to a property title.
- Natural persons who for a continuous period of no less than **ten (10) years** occupy rural plots of land of no more than **5 ha on national or government lands**, shall be **granted title** by the IP provided that the land is not part of publicly owned spaces or allocated for the common good or for a public use purpose (art. 75, Property Law).
- The INA will demand the return of all rural, national, or ejido lands illegally held by private individuals. However, those who can show proof of having **occupied, on their own behalf and in a peaceful manner, national or ejido** lands exploited for a period of **no less than three years**, shall be entitled to be sold the corresponding area, provided that it does **not exceed 200 ha and is not among the exclusions** (art. 13 of the Agricultural Modernization Law).
- The INA will grant title to the **occupants of national or ejido lands** under **production**, provided that they do not exceed the **established limits** (in art. 15, Agricultural Modernization Law). Parcels of any size within the expressed limits can be titled regardless of the crop grown on them.
- The possessors **or occupants of national, ejido, urban or rural lands cultivated with coffee** may request that the INA grant them **full ownership**, after proving their status as coffee growers. The area may be less than 1 ha but not greater than two hundred (200) ha (art. 6, Coffee Growers Protection Law, Decree No. 199-95).

Possession and Prescription

Possession is holding a thing or enjoying a right with the intention of taking ownership for oneself or another person (art. 717 of the Civil Code). According to the Civil Code, the possession of land must be proved by positive acts to which only ownership gives the right, such as the cutting of timber, the construction of buildings, or of enclosures, of plantings or sowings, and others of similar significance, executed without the consent of the party disputing possession.

The right of possession gives rise to prescription (art. 2263, Civil Code) and serves to acquire ownership and other rights *in rem*, or for the extinguishment of these rights. The uninterrupted possession of an immovable property in good faith and with legal title for ten years (art. 2286, Civil Code) or for 20 years without legal title and good faith (art. 2287, Civil Code) means that the property may be acquired by acquisitive prescription. The acquisitive and extinctive prescription of these rights *in rem* shall be declared by the IP (art. 91, Property Law).

In forest areas, the law provides that the ICF will grant a certificate of occupation to the inhabitants of public land.

Acquisition of Ownership Through Supplementary Title

The ‘supplementary title’ is regulated by the Civil Code, enabling owners lacking a registered ownership title or having one that is not recordable, to register their right by summarily justifying before the judge that they have had peaceful and uninterrupted possession of the property for more than 10 years (art. 2331, Civil Code). The petition requesting the admission of such information shall express, among other requirements, the manner in which possession of the property was acquired and the reason why no written title exists or why the title is not recordable. There shall be at least three witnesses to this information, and they shall be property owners and neighbors of the place where the property is located (art. 2336, Civil Code). Once the information is submitted, it will be approved and the Registry will be ordered to issue the requested registration; the approved information will serve as a title for the possessor to be able to dispose of the property, though without detriment to a third party showing a better right.

Challenges of Implementing REDD+ on Privately Owned Land

One constraint for REDD+ is that private ownership may be acquired by a third party **through acquisitive prescription, supplementary title, or by occupation** in accordance with the many aforementioned laws and regulations. Although the Agricultural Modernization Law stipulates that people who deforest forest lands to convert them to agricultural uses after the effective date of this Law will be excluded from the possibility of being granted land (art. 15), it is difficult to ascertain the extent to which this provision has been respected by the various institutions involved in implementing the different laws relating to land tenure. While there are different provisions aimed at preventing forest conservation from encouraging a third party to legally interpret the land as abandoned, it is also necessary for the activities that provide reliable proof of possession (cutting of timber, plantings or sowings, art. 904, Civil Code) to be reconsidered, as this can promote deforestation. In any case, the implementation of REDD+ should **give legal certainty to land owners that participate in forest conservation regarding risks that could result in the loss of ownership or occupation of their land.**

Indigenous Communities

Since the 1980s, indigenous peoples have been engaged in intensive dialogue with the state regarding the adoption of special legislation for indigenous peoples, without much success (Galeana, 2013). However, it is worth mentioning that the National Constitution recognizes the “duty of the State to enact measures to protect the rights and interests of indigenous communities in the country, especially of the land and forests where they are settled” (art. 346).

In recent years, sectoral legislation such as the Forestry Law has increasingly incorporated concerns about the protection of indigenous groups, and a number of lands have been regularized in their name. However, the situation of indigenous peoples in these developments has been uneven. While some of them have managed to obtain ownership or usufruct titles to the land they inhabit, others are still demanding their recognition.

The Agricultural Modernization Law of 1992 stipulates that “ethnic communities that can prove that they have occupied the land where they live for a period of no less than three years, will receive full ownership titles completely free of charge” (art. 92). Based on this, the INA titled lands in the name of certain indigenous groups: Garifuna, Pech, Tawahkas, and Tolupanes (Galeana, Pantoja, 2013) prior to the adoption of the Property Law. However, this titling was limited to granting property rights to inhabited areas, excluding the communities’ functional areas (Galeana, 2013).

The 2004 Property Law then incorporated provisions in its Chapter III relating to the rights of indigenous and Afro-Honduran groups. The Property Law stated that, given the importance that these cultures attach to their relationship with the land, the state “recognizes the right of indigenous and Afro-Honduran peoples to lands they have traditionally owned and which are not prohibited by the law” (art. 93, Property Law). The explicit recognition of traditional landownership was an important step forward. Thus, the process established by the Property Law aims to “guarantee to these peoples full recognition of the rights of communal ownership, use, administration, and management of land and sustainable use of natural resources

by demarcating and granting full title to them” (art. 93).

The Forestry Law then included a provision establishing the “right over forest areas” of indigenous and Afro-Honduran peoples living on land they “traditionally own” in accordance with ILO Convention 169 (art. 45).

Moreover, a large part of indigenous territories overlap with protected areas in Honduras, including the Mesoamerican Biological Corridor (comprising the Río Plátano Biosphere Reserve, the Patuca National Park, and the Tawahka Asangni Reserve). According to the Property Law, the management of protected areas in indigenous lands should be carried out jointly by the indigenous peoples and the state (art. 101).

Titles of Indigenous and Afro-Honduran Communities

The land titles granted to these communities, according to applicable legislation, shall grant them full ownership (or property) rights, but they shall be titled to them “collectively”; however, their right of ownership and usufruct according to their traditional forms of communal property ownership is also recognized (art. 94, Property Law). The property shall be **inalienable, unattachable, and imprescriptible** (art. 100). However, the Property Law also allows the communities themselves to “**put an end to this communal regime, authorize leasing** to third parties, or authorize **other kinds of contracts** that enable the community to participate in investments contributing to its development” (art. 100).³⁹ The most recent titles given to the Miskito peoples have been intercommunity titles covering the communities’ functional areas.

In the case of indigenous and Afro-Honduran areas not registered in the cadaster, the INA has primary responsibility for carrying out the processes to regularize their ownership (art. 125).

Indigenous Lands and Possession/Occupation by Third Parties

The indigenous peoples’ landownership and tenure rights:

- prevail over the titles of third parties who have not possessed the land (art. 96, Property Law);
- but if the third party has possessed the land, he has the right to continue to use it (art. 97); and
- third parties who do not have title to these lands may negotiate with the community to remain on them by paying rent.

The Property Law also stipulates that no authority may issue or register title to communal lands in favor of third parties (art. 102).

Challenges for Landownership by Indigenous and Afro-Honduran Peoples

The land tenure situation of indigenous and ethnic groups is highly uncertain (USAID 2010). In fact, despite the existing laws, many groups do not have access to their lands and are exposed to invasions and expropriation attempts by non-indigenous farmers, different kinds of enterprises, and the interests of the elite in exploiting forests, coastal areas, and other natural resources where these groups live.

To deal with these problems, the second stage of the PATH project prioritizes the delimitation, demarcation, and titling of Miskito lands. Efforts to improve land governance have increased (USAID 2010) and this has resulted in the recent titling of various lands to Miskito indigenous groups⁴⁰.

³⁹ The Property Law, in its article 89, provides for a procedure to individualize property rights to immovable properties held in community property or undivided shares.

⁴⁰ Gobierno otorga títulos de propiedad a cinco grupos indígenas Misquitos, La Tribuna, September 13, 2013. Gobierno Nacional de Honduras, Boletín, 2013, Entrega Histórica del Segundo Título de Propiedad Intercomunitario a Favor del Pueblo Miskito, Concejo Territorial Ahuya Yari, accessible at: http://www.ip.gob.hn/images/sampled/boletn_Ahuya%20Yari_mayo2013.pdf

Currently, a number of complaints regarding these problems have been brought before the Commission and the Inter-American Court of Human Rights (further summarized in the section on conflicts). One of the cases is related to the lack of defense and respect for the land title/ownership rights of the Garifuna against third-party invasions. The Garifuna have also filed complaints in the past and even an appeal on the grounds of unconstitutionality regarding the possibility of titling communal lands to individuals in the community according to the Property Law. In the case of the Garifuna peoples, there have been various conflicts over the adoption of the Property Law and the creation of ZEDEs since their implementation would affect part of these peoples' lands.

3.3 LANDS: DOCUMENTATION AND CONFLICTS

3.3.1 Land Registration

A significant change was made with the drafting of the 2004 Property Law, which made it possible to implement major reforms in the registration and cadaster processes, making use of information technologies and reducing the time and cost of transactions, among other improvements. In 2005, it was estimated that only 14 percent of occupied properties in Honduras were legally occupied and that the remaining 86 percent were illegally occupied, with cases of multiple titles to the same property (USAID 2010).

3.3.2 Public Registration of Property

The Property Law was adopted in an effort to facilitate the systematization and organization of property in Honduras. This has included the establishment of a Unified Property Registry, the purpose of which is to register acts and contracts related to ownership, other rights *in rem* and encumbrances on movable and immovable property (art. 76, Property Regulations). This is a declaratory registration that recognizes the pre-existence of such rights. Although the rights recorded in the registry are presumed to be accurate, their registration does not validate null and void titles, nor does it remedy defective titles (art. 77). However, the registration of acts required by law is mandatory (art. 79). The "Parcel-Based Folio" was also introduced to organize the records by property, assigning them a unique registration number, where all changes to the property are recorded (art. 83). The parcel-based folio shall include information on: the registration of the property, its legal situation, characteristics and use; the nature of the rights being registered; and circumstances relating to the subject, title, and filing entry.

In addition, the National System of Property Administration will gradually incorporate the following information: suitability or potential use of the property, in accordance with the provisions of the Land-Use Planning Law, conditions, liens and encumbrances, easements, etc. (Regulations, art. 87). While the IP has jurisdiction over 22 registries, including one in each of Honduras's 18 departments, Vallejo's research indicated that the parcel-based folio system is currently only applied in ten municipalities (in the remaining municipalities, the person-based folio is still used). The system seems to be of a general nature, registering the titles processed by the different institutions according to their areas of competence: the IP through the national titling program; INA for indigenous peoples and agrarian reform beneficiaries; ICF for national forest areas; and the municipalities for areas within urban perimeters and other ejido lands.

3.3.3 Land Use Change

Although there are laws aimed at halting land-use change in the case of conversion of land suitable for forest use to agricultural land (art. 15, Agricultural Modernization Law), there are also provisions that promote land-use change, including the aforementioned one that allows changes in land use for the establishment of coffee crops and that accepts activities such as the cutting of timber and the construction of buildings as proof of ownership, as provided for in the Civil Code.

3.3.4 Institutions Responsible for Enforcing Property Rights and Resolving Property Disputes

As mentioned previously, various institutions are responsible for carrying out land titling and regularization at the national level.

According to the enabling legislation, the IP, INA, ICF and the municipalities have administrative powers to settle disputes related to these issues. The Property Law states that when there are disputes due to disagreements over ownership, the Executive Power through a Council of Ministers may decide to expropriate the property.

In judicial matters, the parties may bring their conflicts before the courts. As stipulated in the Property Law, they shall submit to the jurisdiction of the Civil Courts of First Instance nationwide based on a special procedure established in this Law. Before resorting to this, these courts may support conflict resolution by conciliatory means. In practice, the local communities or groups of marginalized individuals have difficulty accessing these complaint mechanisms due to the location of the conflict management centers and the cost of transportation, waiting time, advising costs, etc.

3.3.5 Resource Rights and Conflicts

The current land tenure situation in Honduras is complex and poses a significant number of difficulties for the implementation of REDD+.

The diversity of forms of land occupation, multiplicity of bodies responsible for titling, and existence of multiple titles to the same property pose important challenges for the organization of land tenure in the country. Land conflicts are diverse, primarily due to the high level of informality, land invasions, the lack of demarcation of protected areas, the different types of land use, pending claims by indigenous peoples/peasants and, most importantly, the level of poverty of many forest communities in Honduras.

A prior legal review of the land situation in the country (Vallejo, 2011) noted, among other critical aspects: the institutional weakness of the ICF to fulfill the broad responsibilities assigned to it by the laws and regulations, as well as to monitor their implementation; the lack of clarity of the property regime in a large number of land plots, as well as a large number of people illegally occupying the land. It has also been noted that although the INA should only title land with agricultural and livestock potential, in practice it often titles lands for agrarian reform in areas that are suitable for forests.

With regard to indigenous peoples, the territory claimed by indigenous peoples is approximately 2 million ha out of the total national land area of 11.2 million ha. Currently, only 10 percent of the indigenous people of Honduras have ownership titles to their lands (17.8 percent of the national land area) (International Work Group for Indigenous Affairs 2014). The expanding agricultural frontier limits the use of their territories due to invasions by other actors, including peasants and loggers, but also drug traffickers, with significant effects on access to resources and the establishment of a climate of violence in the communities (McSweeney, 2014). In recent years, indigenous peoples' demands for their ancestral lands have led to disputes, and the manner in which land has been legalized individually, instead of communally, has been controversial.

The Inter-American Court of Human Rights examined a case brought by the Garifuna for peasant invasions of their territory.⁴¹ The Punta Piedra Garifuna Community claimed that the state has failed to fulfill its duty to guarantee their rights against the invasion of non-indigenous people on lands and territories belonging to the Community and which the state subsequently recognized by granting them full ownership title. This titling was carried out without an adequate regularization process. The Inter-American Court of Human Rights issued a judgment declaring the State of Honduras responsible for the violation of collective ownership rights.⁴²

⁴¹ Case No. 12.761, Comunidad Garifuna Punta Piedra y sus miembros, Honduras.

⁴² For further information, see: Corte Interamericana De Derechos Humanos, Comunidad Garifuna de Punta Piedra y sus miembros vs. Honduras, Sentence 8 October 2015. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_304_esp.pdf

PATH II has increased efforts for the titling of indigenous and ethnic groups' lands, but several claims are still pending. Understanding these cases at the judicial level is complicated. With respect to REDD+ implementation, it is essential to continue improving the conditions for registration of property, including the possibility of recording the enrollment and commitments of a given territory to REDD+ activities in the Parcel-Based Folio.

Although efforts are being made to regularize illegal tenure, there are several issues that go beyond land regularization and titling.

Disputes over land and natural resources, including relating to logging, have led on several occasions to violence and even murder, as in the Luna López vs. Honduras case⁴³ brought before the IACHR. There have also been recent violent incidents involving land claims and protests by the peasant movement that have led to the death of peasant representatives.⁴⁴

Some of the most relevant issues related to the land conflicts summarized by Vallejo are included below.

Conflicts over Landownership in Honduras

1. Third-party land grabbing of forest lands occupied by poor peasants
2. Grabbing of indigenous communal lands by peasants
3. Use of supplementary titles to legalize national lands as private property
4. Lack of follow up and monitoring of the implementation of management plans and established restrictions in protected areas and other areas under a special regime (by both settlers and the INA)
5. Conflicts between landowners and peasants, and between peasants and indigenous and Afro-Honduran communities
6. Encroachment of peasant groups onto national or community lands
7. Alteration of boundaries of demarcated areas
8. Lack of monitoring of usufruct agreements or contracts in protected areas
9. Titles granted without proper regularization, resulting in multiple titles to the same property
10. Land grabbing in areas under usufruct agreements.

3.4 RECOMMENDATIONS

It is essential to pay particular attention, both in terms of content and practical implementation, to legislation on landownership in the context of REDD+ implementation in Honduras.

Regarding the **content of the legislation**, there are two relevant issues: Various laws leave open the possibility of expropriation despite the existence of firm property rights, leading to a high level of uncertainty surrounding the application of REDD+; and in the case of land granted under agrarian reform, during the period when the new owner continues to pay off the grant, the law contains provisions that in some cases there are chances of the land being expropriated—for example, if it is used “inappropriately.” The only way to ensure a minimum level of sustainability over time is to clarify and solve these issues before REDD+ is applied in any given territory.

In terms of **practical implementation**, the multiplicity of laws/bodies with responsibility for implementing the legal framework is problematic, so it is highly recommended that REDD+ implementation takes special safeguards to deal with these problems. A possible way of ensuring the proper application of the different

⁴³ Ruling of October 10, 2013. Case abstract: http://www.corteidh.or.cr/docs/casos/articulos/resumen_269_esp.pdf

⁴⁴ Honduras: Se reaviva conflicto agrario en el Bajo Aguán, La Prensa, May 20, 2014; Campesinos de Honduras: Les roban la tierra, les quitan la vida, El País, February 7, 2013.

land-related laws for REDD+ would be to assign oversight duties to an institution, and to provide clear instructions for supervision and coordination.

- Forest policies: Honduras has developed diverse instruments that promote forest management and protection. Fostering the implementation of the Funds to implement instruments to incentivize forest protection and eliminate or reduce the influence of perverse incentives is key for REDD+ implementation.
- In publicly owned lands where other landholders are established, a number of legal instruments have contributed to forest conservation with the support of forest dwellers, such as co-management and usufruct contracts. These can provide a basis to channel benefits from REDD+ implementation to forest dwellers, regardless of the state ownership of the land.
- Harmonizing and clarifying the diversity of laws applicable on land tenure and institutions with responsibilities on land tenure could contribute to facilitate the implementation of the legal framework and to better implement regulatory processes for land tenure for REDD+.
- Because there are a number of conflicts over land tenure in the country, it is recommended that REDD+ begin with nested implementation, building on pilot projects in specific areas where the existing modes of occupation and ownership can be clearly identified in advance, instead of having an open or more massive call for participation in the program.
- Additionally, it is recommended that the complaints system to be created for REDD+ also have the power to review such complaints during the implementation of REDD+ readiness activities.
- In the case of indigenous and Afro-Honduran peoples, it is recommended to consider the possibility of precluding community title from being divided into individual titles in order to ensure the permanence of REDD+ lands over time.
- Protected areas may provide the most suitable environment for the first experiences, due both to their geographic scope and to their management based on a Forest Management Plan, as some of the experiences so far in Honduras have shown.
- The potential inclusion of the minifundio in REDD+ will also pose challenges because of the small size of the parcels. Thus, consideration may be given to the possibility of working with cooperatives or groups of neighboring peasants to increase the area with forest cover and subsistence crops.
- To prevent changes in forest land use, it is important to harmonize forest policy with other sectoral policies, thus ensuring that their implementation does not result in changes in forest use. To this end, the promotion of, and training in, silvo-agroforestry techniques could be a valid way to meet the combined objectives of small farmers.
- In general, it is necessary to strengthen the capacities of the State Forest Administration by defining the roles played by the different public institutions that make it up, and by clarifying the rules, incentives, expedited procedures, and due process for infractions for those who come under its administration (forest land owners, peasant groups, entrepreneurs, etc.).
- The implementation of REDD+ in Honduras must closely follow the development of land tenure conflicts particularly with regards to areas selected for REDD+ implementation to avoid exacerbating existing social conflicts.

4.0 CARBON RIGHTS

There is no clear definition in Honduras of who owns carbon-related rights. However, the legislation refers to carbon sequestration as an environmental service.

The definition of the characteristics of a REDD+ mechanism for the country will greatly influence the legal tools used to implement it. These include, but are not limited to, usufructs, conservation easements, trusts, and private reserve schemes. The mechanism could be conceived as a more decentralized process, for example, following a “nested” approach, or as a centralized mechanism. Given the decentralization processes that have taken place in Honduras, the complex land situation, and the various social conflicts that exist, a decentralized/nested approach may be best suited to the current situation in Honduras.

Although the legal framework does not establish specific carbon rights, there are laws that clearly link the right to forest and natural resources to the owner of the land. Thus, it is important to have clarity about land tenure before implementing a project.

4.1 RIGHTS RELATED TO OWNING OR TRADING CARBON

In Honduras, no in-depth analyses of the possibility of trading or owning carbon have been identified, except for Vallejo’s GIZ-funded analysis, which reviews the provisions of the legal framework related to carbon rights (Vallejo, 2013a). An analysis has recently been undertaken for “Support of legal preparedness activities for REDD+ in Honduras,” one of the objectives of which is to “develop a proposal to reform the current legal framework for forests in order to facilitate the implementation of REDD+ projects and other compensation mechanisms in the country.”⁴⁵

In Honduras, there is a lack of clarity about carbon-related rights and little discussion of carbon trading between different actors. This issue has been loaded with political and legal implications that may be linked to the existing social conflicts related to land and natural resource ownership. They have also influenced disputes over the installation of high-impact projects such as hydropower and mining, which have resulted in violent clashes among indigenous peoples, Afro-Hondurans, and the state.

The social difficulties encountered in defining the ownership of natural resources in the country have delayed but not prevented progress on a number of payments for environmental services initiatives in specific sites that may provide useful information on how this issue can be addressed in Honduras. The environmental services initiatives and references in the legislation tend to link carbon sequestration with compensation for environmental services.

The Forestry Law establishes that **suppliers** of environmental goods and services produced by forests, such as water, fauna, **carbon capture**, climate and others, and **users shall agree on the fees to be paid for the service**. Payments for environmental services must ensure the protection of the forests that produce these services.

The negotiation of national and international agreements will be based on the results of a study on the economic valuation of environmental services to be conducted by the ICF (art. 44, Forestry Law).

Further details on a possible PES scheme for carbon sequestration have yet to be developed. However, the laws provide the basis for the development of regulations by the relevant entities.

⁴⁵ For further information, see the report: Mario Vallejo Larios, *Obstáculos y Opciones Legales para la Implementación de Iniciativas REDD+ en Honduras*, November 2014. Available at: <http://agendaforestal.org/wp-content/uploads/2015/12/Obst%C3%A1culos-y-Opciones-Legales-para-la-Implementaci%C3%B3n.pdf>.

4.2 CARBON CREDITS AND EXPERIENCE WITH CONTRACTS

Honduras does not yet have experience with carbon credits or carbon sequestration projects. Given the controversies this issue has generated, in December 2011, SERNA publicly announced that Honduras is not selling carbon credits in the forestry sector and that no organization is authorized by the Honduran government to sell carbon credits in the forestry sector⁴⁶.

4.2.1 Clean Development Mechanism: Legal Framework and Projects

Honduras's Designated National Authority for the CDM is SERNA, which maintains information on approved projects, primarily hydropower and methane capture projects.⁴⁷ SERNA has published on its webpage the necessary requirements for these types of projects to be approved.⁴⁸

According to information provided by the UNFCCC Secretariat, Honduras has 29 registered CDM projects. Information from Finanzas Carbono also mentions the existence of projects adopted under the VCS and Gold Standard.

However, **the implementation of the CDM has been a mixed bag in terms of its results** due to, among other things:

- the approval of CDM projects in areas of intense social conflict, such as in the Bajo Aguán region, where there are various land disputes;
- the training needs of workers, officials, and entrepreneurs to implement relevant technical aspects of CDM projects;
- social problems arising out of the implementation of projects such as hydropower development; and
- devaluation of carbon credits internationally (lack of incentive).

In particular, there are no registered CDM projects for afforestation and reforestation.

4.2.2 Use of Other Legal Instruments

The main ways in which carbon sequestration-related activities have been carried out include different reforestation initiatives undertaken by state bodies and private stakeholders. In this context, it is envisaged that the precepts of **usufruct, contracts, private reserves, and trusts** will be applied. Finally, there are various specific initiatives regarding compensation for **environmental services**. The next sections will look at relevant legal aspects of the following experiences:

1. **Payments for Environmental Services:** Based on the current legal framework, including various provisions relating to PES, there are a number of payments for hydrological ecosystem services projects in Honduras.
2. **Forest Management or Usufruct Agreements or Contracts with Communities:** In forest management, the country has had more experiences with forest usufruct or management contracts or agreements with communities or family groups, both in production forest areas and in protected areas' buffer zones. In general, these contracts have been drawn up using a standard contract format. These models of community forestry contracts may be useful for REDD+ implementation.

⁴⁶ December 2011 Press Release, accessed at: <http://cambioclimaticohn.org/?art=1021&title=Venta%20Bonos%20de%20Carbono%20en%20el%20Sector%20Bosques%20de%20Honduras.&lang=es>.

⁴⁷ See: <http://cambioclimaticohn.org/?cat=1125&title=Proyectos%20MDL%20Registrados%20en%20Honduras&lang=es>, accessed October 1, 2014.

⁴⁸ Accessed at: <http://cambioclimaticohn.org/uploaded/content/category/938744466.pdf>

3. **Conservation Easements:** Another legal concept used to protect forests is that of the conservation easement. Conservation easements have been implemented by the Forest Regulations, which provide for their creation in the case of payments for environmental services, either as a state initiative in some cases, or as a voluntary arrangement on private lands.

Payment for Environmental Services in Honduras

Legal Framework for PES

The Honduran legal framework has introduced provisions relating to the establishment of payments for environmental services with a focus on the provision of water services. For example, the Water Law's definition of environmental services (art. 23.6) includes water conservation and regulation for different uses and the protection and conservation of biodiversity, but also includes the mitigation of greenhouse gas emissions.

The Water Law defines the concept of payments for environmental services (art. 23.7) as “negotiated fees through which compensation or payment is made for the benefit or utility received from the use or exploitation of an environmental service, and which will be used to finance the sustainable management of the natural resources associated with that service.”

It also provides for “environmental services charges” to be paid by the users for the conservation and protection of water resources (art. 49); thus, those who benefit from the environmental service in a watershed, sub-watershed or micro-watershed “must reasonably compensate those who allow, promote, or conserve the generation of these resources.” The forms of payment and distribution will be established in the Regulations of the Water Law (art. 51). The Water Law also stipulates that the state or legal or natural person providing water services must incorporate the cost of compensation into the established tariff structure (art. 52). Although the law does not establish how these compensation payments will be delivered to the service providers, when the state grants exploitation rights on national lands, the costs of environmental conservation, protection, and remediation for the uses authorized by the state shall be borne by the holder of the exploitation rights (art. 52). In the next section, we will look in greater depth at some of the provisions related to environmental services. However, these payments for environmental services schemes are generally being implemented in the country through specific initiatives carried out by a particular state institution or international cooperation organization, rather than through a national compensation for environmental services scheme. This approach may be a viable solution to the varied and complex reality presented by land tenure and land use in Honduras.

There are several very active NGOs in forest protection and the establishment of PES. For example, the AFH is a platform for dialogue and consensus building on forest issues, and it serves as the secretariat of the National Committee for Environmental Goods and Services of Honduras, which advocates and coordinates national actions to promote the valuation of environmental services, as well as their negotiation and compensation.

Review of PES Cases

Some PES experiences in Honduras are reviewed below to examine a number of relevant legal aspects connected with contracts under development or already existing for this type of scheme.

Pico Bonito Project: While it is presented as a REDD+ project because of its future intentions to trade carbon credits generated from sequestration through improvements in degraded forest lands and avoided deforestation, the project has implemented a PES scheme where part of the compensation is provided through activities such as training. Pico Bonito is in the area adjacent to the Pico Bonito National Park, the second largest national park in Honduras, located near La Ceiba, the third most populated city in the country, on the north coast. The co-founders are two NGOs, the Pico Bonito National Park Foundation, and the EcoLogic Development Fund. The World Bank provided seed funding to establish the project, and a modified Payments for Environmental Services framework was set up. The goal of the project is for avoided

deforestation to result in carbon sequestration that is certified under the United Nations CDM and/or through voluntary markets as REDD+ projects. To this end, the project also envisages certifying emissions under the Climate, Community and Biodiversity standards, although this has not yet happened.

A number of important points should be noted in connection with the contracts and voluntary agreements used in two particular experiences with PES initiatives:

Protection of the Emerald Hummingbird, a trust to establish PES for biodiversity protection: The purpose of this initiative is to establish a PES scheme for biodiversity protection, focused in particular on the emerald hummingbird, an endangered endemic species. The World Bank provided 402 million lempiras for the construction of the so-called “central highway,” which consists of paving the Olanchito-San Lorenzo road, with the condition that the natural habitat of the Honduran emerald hummingbird (*Amazilia luciae*)⁴⁹ is preserved. Recently, in May 2014, Decree 32-2014 was adopted to extend the current boundaries of the Emerald Hummingbird Wildlife Refuge (declared through Decree 159-2005 and subsequently amended in 2011).

Although the ICF is responsible for the general administration of this protected natural area, the Refuge is co-administered by the NGO Ecological and Socioeconomic Development Research Association, which signed a co-management agreement with the ICF in 2011, and the municipalities of Arenal and Olanchito⁵⁰. Private landowners in the Refuge will be able to benefit from activities such as PES. However, these landowners must respect the ban on activities such as livestock farming, hunting, the capture of any species for non-scientific purposes, cutting, burning, or extracting vulnerable species, the introduction of alien species, and any mining activity throughout the protected area (art. 10). The breach of these prohibitions will be sanctioned as an environmental felony or misdemeanor. The Decree also indicates that landowners holding property inside the protected natural area who wish to carry out tourism activities or projects are exempt from paying for the environmental permit, but they are required to conduct an environmental impact assessment (art. 7).

Agreements to Lay the Foundation of the PES Scheme

The draft trust agreement between the Secretariat of Public Works, Transport and Housing and a trustee bank that will administer the funds has an initial duration of ten years. The purpose of this trust agreement is for the bank, as trustee, to ensure the administration and implementation of the initial funds donated in trust for use in a PES scheme for **landowners or possessors** inside the Honduran Emerald Hummingbird Habitat Management Area. Thus, these individuals will be the beneficiaries for whom the funds will be administered. The initial funds will be provided by an international initiative—in this case, the Honduras Debt Conversion Program with Spain.

A **Technical Committee** will be responsible for allocating resources in accordance with the PES contracts. It will comprise representatives of: ICF, which will chair the committee; the Secretariat of Public Works, Transport and Housing; the National Defense Secretariat/Honduran Air Force; the Municipal City Hall of Olanchito and the Municipal City Hall of El Arenal, both located in the department of Yoro; and a delegate appointed by the “trustee” to monitor the Fund. The draft agreement establishes that the Committee will be responsible for, among other things:

- establishing criteria and priorities to sign agreements for the provision of environmental services;
- signing contracts for the provision of environmental services with the landowners or possessors in accordance with the priorities and criteria established for this purpose;

⁴⁹ Congreso Nacional aprueba cinco artículos de ley para proteger hábitat del colibrí esmeralda hondureño, Congreso Nacional, Press Release, May 6, 2014.

⁵⁰ Available at: <http://asidehonduras.org/COLIBRI/CONVENIO-ASIDE.pdf>, accessed October 1, 2014.

- deciding who will be awarded agreements and the annual amount of Payments for Environmental Services;
- developing and applying the technical-financial regulations the Environmental Services Providers must follow;
- determining the annual amount to be paid, within the maximum amount established in the “Contract for Provision of Environmental Services,” based on the results of on-site compliance inspections;
- issuing drawdown notices for the “Trustee” to make the payments in the manner agreed with the “Environmental Services Provider;” and
- in general, making decisions on matters not specified in the agreement.

The beneficiary must place hectares of land under a strict conservation regime for a period of 5 years with automatic renewal. The contract will stipulate the amount to be paid annually, and to collect it, the beneficiary must provide evidence of technical compliance with his conservation obligations by presenting a Compliance Certificate issued by the ICF.

In the event of a verified breach of the obligations for which PES is made, the bank may temporarily suspend payment for a given year. In order for the payments to be resumed, the ICF must certify that the causes of the breach have been rectified; in this case, the beneficiary will not be entitled to claim amounts outstanding due to breach or arrears.

PES scheme through voluntary agreements for the provision of water services

This PES scheme is based on the Inter-institutional Agreement for Watershed Management through Payments for Ecosystem Services in the micro-watersheds of the Trifinio region of Honduras. The relevant municipalities, the Municipal Water Board Associations of three municipalities, and the Director of the Copán Forest Region agreed to delegate their responsibilities for administering the Forest Compensation Fund (“Green Fund”), which will finance the payments for environmental services, to the Water Administration Boards of each micro-watershed. The respective landowners will sign voluntary agreements with the Water Administration Boards for this purpose. These Boards are social organizations that own each community’s drinking water and sanitation system, with a certain number of users whose fees are used to finance the operation and maintenance of the system as a non-profit service (in accordance with the General Regulations of Drinking Water and Sanitation Sector Framework Law).

Through the proposed **voluntary framework agreement for compensation**, the owner assumes an obligation with the Green Fund Administrative Board to implement practices or activities for the recovery and conservation of ecosystems on this land.

The Administrative Board will have the following duties, among others: coordinate and monitor implementation, charge user fees, make timely compensation payments to the landowner, and implement a monitoring and surveillance plan.

The framework agreement specifies the activities that can and cannot be performed by the owner, such as conserving existing forest areas, avoiding unsuitable practices such as burning and fumigation, not renewing potato or vegetable crops, and avoiding livestock grazing and other farming and ranching activities. The agreement provides for compensation to be paid twice a year to the owner, who will also receive a partial income tax exemption on the property. The agreement has an initial duration of five years.

If the obligations under the agreement are not fulfilled, the Support and Monitoring Committee may choose to apply any of the following sanctions, depending on the seriousness of the breach:

- a) suspension of compensation for six months;

- b) reimbursement, by working on restoration activities, of the equivalent cost of the technical assistance, supplies, and materials delivered as compensation; and
- c) total exclusion from the compensation plan.

However, the owner shall be released from compliance if he does not receive compensation or if events beyond his control prevent it.

Other PES schemes

In general, there is a scarcity of information on the state of progress with PES schemes in Honduran watersheds, but those identified include schemes in Colon and Intibucá, among others. The Integrated Management Plan for the Montecristo Trinational Protected Area (MTPA) in the Trifinio region of El Salvador, Guatemala, and Honduras also includes a project to establish a PES mechanism. This will be done in a participatory and integrated manner through a trinational institutional framework. To this end, work is under way to bring about the legal, territorial, and institutional consolidation of the MTPA, including the possible recategorization of management areas, internal land-use planning, the adoption of special management plans, agreements for technical and financial assistance, and/or the collection of payments for environmental services to be deposited in a trinational trust fund.

There are private lands in the area, and the plan is to integrate them through activities such as the establishment of a trinational private landowners association, the provision of technical assistance for the preparation of management plans for individual and group properties, and the facilitation of instruments and mechanisms to promote the maintenance and/or restoration of natural forest cover as part of the PES program.⁵¹

Management and Usufruct Agreements

There are two types of use and management contracts on State and ejido land: management or co-management contracts with NGOs in the case of protected areas, and usufruct contracts with agroforestry groups, communities, or family groups. In the case of usufruct contracts, the possibility of harvesting and transferring the products produced, as well as the long duration of the contract and the land's registration in the state's CPPFI, are key incentives that could facilitate REDD+ implementation through agreements with the occupants of forest lands. In addition, having developed a standard contract for this purpose, usufruct is regulated by the Civil Code, which stipulates that "the usufructuary of an immovable property has the right to receive all of its natural fruits, even those pending at the time the use is deferred"(art. 760).

Conservation Easements

Forest protection is also promoted through conservation easements. Two known cases are:

- a) in the micro-watershed in Valle de Ángeles, promoted by a project of CATIE; and
- b) in Lake Yojoa watershed, entered into between private landowners and the Association of Municipalities for the Protection of Lake Yojoa (AMUPROLAGO).

Such easements are regulated in the Civil Code (Title X of Book II). An easement is a charge levied on a piece of land for the use of other land with a different owner. Three types of easements are recognized: a) natural easements, which arise from the natural situation of a place; b) legal easements, which are established by law; and c) voluntary easements, which are created by an act of man.

⁵¹ Proyecto de Manejo Integral del Área Protegida Trinacional de Montecristo. Document submitted to the Inter-American Development Bank. Document LEG/OPR/RGII/IDBDOCS#688198.

A legal conservation easement is defined in the Forestry Law as an established right to use a forest area for the conservation and sustainability of renewable natural resources. The area is subject to legal restrictions on the rights of use and exploitation of the property for reasons of public utility (art. 11.52).

Although the law does not provide further guidance regarding conservation easements, it envisages the possibility of establishing legal conservation easements on private lands in forest areas that were declared protected areas before the Forestry Law came into force (art. 64). In the event that the normal use of the land is affected by the declaration of the protected area, as an alternative to the creation of a conservation easement, compensation for the use of environmental goods and services may be negotiated. However, if the negotiation is not successful, the state may expropriate the land in exchange for compensation.

In contrast to legal easements, in the case of voluntary easements or private natural reserves, the landowner or possessor chooses the type of restrictions to which he wishes to subject his land, provided that they do not violate the law or any provision of public order or social interest. Once the easement is registered, the owner or possessor of the “servient landholding,” whether a private person or a community organization (water boards, agroforestry groups, or ethnic communities), acquires the rights/obligations specified in each case. In general, an easement represents the commitment to conserve a landholding by adopting forest protection measures in exchange for compensation.

Observations on the feasibility of using different legal precepts

This section provided examples of legal models currently being used for similar or compatible purposes to those of REDD+. Although various legal precepts could be viable, the major drawback to implementing most of them is that they require the recognition of landownership, whether in favor of an individual (private property) or the State.

The State, Property Rights, and Compliance with Obligations

Once land and resource tenure issues are clarified and the owners participating in REDD+ give their consent, it seems that the government could engage with international buyers to negotiate carbon credits generated by REDD+. The Honduran legal framework gives the State clear authority for environmental protection and the rational use of natural resources. Nevertheless, despite the legal framework that confers to the state a relevant role in negotiating international agreements for carbon sequestration, there is no clarity concerning the extent of this capacity and whether individuals would be also entitled to reach agreements with third parties at the international level. The law also provides that the State can manage such activities for the private sector, without being the guarantor (Forestry Law, art. 152).

Land-use planning is also a useful tool for organizing land use on the ground in different areas of the country. The Forestry Law gives the ICF broad powers both to regulate the use of forest resources through management plans and to regain ownership of natural forest areas. However, a number of factors could make compliance with international carbon sequestration agreements difficult, including:

- a diverse and extremely fragmented legal framework, which complicates implementation in the context of limited institutional capacities, particularly in the forest sector,
- implementation difficulties on the ground, and the need to increase monitoring and the systematization of experiences, and
- difficulties related to land tenure in general throughout the country, with serious pockets of social exclusion in some areas.

Therefore, the development of REDD+ agreements **should consider key aspects, such as the management of benefits and the liability of actors/institutions/the state for non-compliance**. From the perspective of communities assuming forest management obligations, it should be kept in mind that potential non-compliance may be caused not only by the communities themselves (in the case of intercommunity property, for example), but also—and this is where the greatest danger lies—by third-party

land invasions and illegal logging, leading to situations of non-compliance that are not attributable to the inhabitants/community/landowners, but that have a significant impact on the results of carbon sequestration. Therefore, it is essential to have mechanisms in place to address these issues and to work to improve the illegal logging situation.

4.3 OWNERSHIP OF CARBON-RELATED RIGHTS

Key aspects of different interpretations of carbon-related rights are reviewed below. There are two main possible interpretations.

Legislation	
<p>Ownership by accession</p> <ul style="list-style-type: none"> - The ownership of property gives the right by accession to all that it produces, or is united or incorporated thereto, either naturally or artificially. The products of things are natural, industrial, or civil fruits (Civil Code, art. 634). - Natural fruits are “the spontaneous products of the soil” (Civil Code, art. 635). “The natural fruits of a thing belong to the owner of the thing, without prejudice to the rights established by laws, or by an act of man, to the good faith owner, usufructuary, or lease holder.” “The plants which the earth produces spontaneously (...) and other products of these plants belong to the owner of the land” (art. 637). <p>Ownership of the benefits generated by forest resources:</p> <p>Administration of public forest lands. The state (through the ICF), the municipalities, and other state entities are responsible for the administration of the public forest areas they own, as well as (...) [the] benefits derived from their management and utilization” (art. 48, Forestry Law).</p> <p>Administration of private forest lands. The owners of private forest vocation lands are responsible for their administration, as well as for (...) [the] benefits derived from their management and utilization.</p>	<p><i>Ownership by accession of carbon benefits produced by natural forest resources</i></p> <p>Under the provisions of the Civil Code, the benefits associated with carbon sequestration in forest resources can be understood as natural fruits of the forests, and thus “belong to the owner of the thing,” in other words, to the owner of the forest.</p> <p>The Forestry Law contains more specific provisions regarding the benefits derived from the management and utilization of forest resources. It establishes that the benefits of public forest areas belong to the respective public entities and those of private landowners belong to those landowners. Therefore, it can clearly be inferred that ownership of the benefits related to carbon sequestration through forest management belongs to the owner of the land.</p> <p>It should be recalled that in the case of usufruct contracts with private individuals, ownership of the benefits is generally granted to the private individuals or usufructuary.</p>
<p>Provision of an Environmental Service</p> <p>Forestry Law, art. 3.15: The purpose of this Law is (...) to promote and facilitate activities aimed at carbon capture, for the subsequent sale of carbon credits.</p> <p>Forestry Law, art. 44: Reaching agreement on payments for environmental services</p> <p>The public and private suppliers of environmental goods and services produced by forests, such as (...) carbon capture, and the users of these goods and services shall reach agreement on the payment of fees for the service (...). The payments for environmental goods and services shall ensure the protection of the forests that produce the services.</p> <p>The negotiation of national and international agreements shall be based on the results of a study on the economic valuation of environmental services to be conducted by the ICF. (...)</p> <p>Forestry Law, art. 152: Management of Afforestation Funds</p> <p>The ICF shall manage funds to promote the afforestation of</p>	<p><i>Provision of the environmental service of carbon sequestration through forestry practices</i></p> <p>There are a number of relevant regulations for the payment of environmental services, focused on compensation for water services.</p> <p>The state is given an important role in negotiating international carbon sequestration agreements and in managing such arrangements, but it is not clear whether this prevents individuals from entering into agreements with third parties internationally. Additionally, from the perspective of liability, the provisions state that it can not be the guarantor of these activities undertaken by the private sector.</p>

<p>deforested or degraded areas by, inter alia: b) managing programs for carbon capture, the sale of oxygen and transboundary environmental services, making the necessary arrangements with international organizations to provide funding for the private sector to carry out these activities without the State acting as the guarantor.</p> <p>Forest Regulations, art. 401: The State shall manage funds to develop programs for carbon capture, the sale of oxygen and transboundary environmental services in degraded areas of buffer zones.</p>	
<p>SUBSOIL</p> <p>Mining Law, art. 2: The state exercises eminent, inalienable, and imprescriptible domain over all mineral resources existing in the national territory (...). In the exercise of its right of domain, the state regulates inorganic mineral resources and oversees their technical and rational use.</p>	<p>Carbon or its analogous component is not in principle necessarily a mineral found in the national territory; however, the state's ownership of subsoil resources could be construed to extend to carbon in certain cases. The consideration of soil and subsoil rights to determine the ownership of carbon has been criticized by several people, because some consider it a marginal element in comparison with the carbon stored in forest resources and other resources, or because a default value is often used to calculate it.</p>

Establishing the legal nature of carbon sequestration may help in selecting the most useful legal instrument for agreements with landowners and in understanding how to legally treat the benefits received from carbon sequestration. The key issue is to determine how to ensure that these benefits will reach those who manage the forests and give the REDD+ program legal stability.

If the legal formula adopted does not reflect the reality of the communities living on the land, this could make it impossible to implement REDD+ or cause serious deficiencies. Therefore, whatever legal formula is used should encourage the communities to come together and support REDD+ activities, provide basic provisions for cases of non-compliance, and address the key aspects of benefit sharing. It would be counterproductive if the legal formula used were to lead to greater social conflicts, eventually undermining the sustainability of REDD+.

Several provisions in the legal framework refer to carbon sequestration as an environmental service, and to the possibility of signing different types of contracts for forest protection and compensation through payments for environmental services.

Generally, the subject of a compensation for environmental services contract is the provision of an environmental service, such as carbon sequestration,⁵² i.e., the purchaser pays for a certain number of units of sequestered or avoided carbon emissions. The “seller” will receive payment once the outcome of a given amount of sequestered carbon units has been verified. If the expected outcome is not achieved, the seller will not receive compensation or will only receive partial payment.

If the forest resources and the land naturally provide this service, who would the seller of carbon sequestration be? Is it possible to say that environmental services have an “owner”? Does the law provide a definition of who owns the service? In most cases, as in that of Honduras, the answer is no. There is no literal definition of the owner of the environmental service of carbon sequestration. Nor does the law provide for the separation of ownership of carbon sequestration from ownership of the forest resources that are providing this environmental service. Nevertheless, the law provides sufficient elements to find a possible

⁵² Greiber, Thomas (Ed) (2009). Payments for Ecosystem Services. Legal and Institutional Frameworks. IUCN, Gland, Switzerland, page 30.

answer to some of these questions.

In this case, can a community living in an area sign a contract with a third party or with the state to receive compensation for the environmental service of carbon sequestration? How can this be determined? In first place, “Property” rights related to environmental services can be associated with property rights over the natural resources that provide these environmental services—i.e., the forests and the land. Under the provisions of the Civil Code, the benefits associated with carbon sequestration in forest resources can be regarded as natural fruits of the forests, so they “belong to the owner of the thing,” and in the case of plant products, they are understood to “belong to the owner of the land.” This applies regardless of whether the owner is a private individual, a community, or the state.

The Forestry Law contains more specific provisions regarding the benefits derived from the management and utilization of forest resources. It establishes that the benefits of public forest areas belong to the respective public entities and that those of private landowners belong to those landowners. By analogy, this should also apply to communities that have ownership title to their lands, whether they are indigenous or ethnic groups, as well as considerations related to the implementation of ILO Convention 169. Therefore, it can be clearly inferred that ownership of the benefits related to carbon sequestration through forest management belongs to the owner of the land. Thus, the public entity or respective owner can receive the benefits of the environmental service of carbon sequestration. It would also appear that private individuals can enter into contracts with third parties (universities, businesses) to be compensated for the service of carbon sequestration. This can also be inferred from article 165 of the Forest Regulations, which establishes that “in private forest areas, the owner may voluntarily establish private forest reserves or conservation easements,” which, if they meet the necessary requirements, “shall be certified as such by the ICF. In these cases, there shall also be compensation for environmental services.” The ICF plays an important support and monitoring role by either granting certification or approving a management plan, both of which facilitate forest management and utilization while allowing the ICF to keep informed about the carbon sequestration initiatives being implemented in the country for the purposes of monitoring and national accounting.

This alternative should be reviewed in the context of the current land situation in Honduras because, as mentioned in previous sections, a large number of lands are irregularly occupied or belong to the state. When the lands in question are State property, the state can sign a land use contract with the communities inhabiting them. The R-PP states that “almost 50 percent of all forests are State-owned, but of this percentage, nearly all are without registered land titles,” concluding that this situation “contributes to heightened insecurity or legal uncertainty with respect to ownership of forest lands.” This clearly shows how important it is, before applying REDD+ in a given area, to regularize the land tenure situation by defining ownership and drawing up the necessary contracts to avoid the de facto eviction of the inhabitants. Moreover, the establishment of a usufruct contract in State forest areas, following the current models in use (previously described in this analysis), provides the usufructuaries with “the rights to use and enjoyment of the land, as well as (...) [of] the **goods and services produced**, [which] can be an **object of market transactions by the usufructuary, who shall receive the benefits derived from them**; similarly, they may be transferred without remuneration, provided that **prior authorization has been obtained from the ICF**, on the understanding that the **bare ownership of the land shall always belong to the State**” (usufruct contract is reviewed in an earlier section of this analysis). The usufructuaries may therefore be compensated for environmental services of carbon sequestration by either the state or third parties. These contracts will generally also be based on a management plan approved by the ICF.

The R-PP recognizes the rights of the landowner or usufructuary to receive benefits from carbon sequestration. However, it also recognizes that the “ICF will comply with its legal mandate as facilitator, regulator, standard setter and supervisor to ensure that failures or abuses do not occur or are at least drastically reduced. In the event that they occur, it will take action against the offenders, in accordance with its duties.”

Another alternative to the previously mentioned contract is to establish contracts for the performance of certain practices or land uses assumed to provide a given environmental service—i.e., conserving and

improving the forest cover of an area will provide the environmental service of carbon sequestration. In this case, “the purchaser” (the state or a third party) assumes that a certain amount of carbon sequestration will result from the owner/usufructuary implementing certain land management and land use practices; however, in fact, payment will be made for the (manner of) land management, not the result.⁵³ If the owner/usufructuary respects the practices agreed with the purchaser, he will receive compensation, regardless of whether the expected amount of carbon has been sequestered. If he does not implement the agreed practices, he will not receive compensation or will receive only part of it. This section provided above an overview of a number of such cases in Honduras; therefore, understanding the legal issues associated with their implementation could be useful for REDD+ implementation.

According to this last alternative, would it be possible to enter into agreements with third parties (universities, businesses)? The answer to this question depends on whether there is ownership/usufruct or other title to the land. If a community: has recognized land-use rights; can legally guarantee which practices will be carried out on its land; and has the right to go before the respective authorities and submit a complaint if a third-party implements illegal practices to the contrary; then the likely answer is yes.

Also, as previously mentioned, there are conflicts in Honduras over the regularization and recognition of landownership. While it is important to regularize the rights of the communities occupying these lands before applying REDD+, it is also essential to ensure that this does not lead to the *de facto* eviction of the communities. There are a number of indigenous communities that are still in the process of gaining recognition of their lands, as well as protected areas inhabited by communities that have yet to be demarcated.

Overall, regardless of which legal formula is selected, it would appear that in principle, private individuals are able to enter into environmental services compensation contracts with third parties (universities, businesses, NGOs) with the involvement of the ICF in such tasks as approving the area’s management plan and granting certification. The Forestry Law provides for public and private suppliers of environmental goods and services produced by forests, such as carbon capture, and the **users of these goods and services to reach agreement on the payment of fees for the service**. The law establishes **certain criteria to take into account in establishing these fees**, including that payments should result in **guaranteeing the protection of the forests that produce the environmental services** (art. 44, Forestry Law). The law facilitates the establishment of private contracts; however, it also appears to reaffirm the state’s central role in negotiating compensation agreements at the international level. The law provides for the **ICF** to manage funds to promote the afforestation of deforested or degraded areas through, inter alia: [the] **management [of] programs for carbon capture**, the sale of oxygen and transboundary environmental services, **making the necessary arrangements with international organizations** to provide funding for the private sector to carry out these activities without the state as guarantor (art. 152, Forestry Law). A number of questions remain regarding, for example, how the state will negotiate internationally to receive REDD+ compensation without taking risks or being the guarantor of the units of sequestered carbon? Other questions have to do with the legal basis for the state to engage in these negotiations, i.e. if the ownership of the benefits belongs to the landowners, what legal basis would the state have to receive compensation and how would it be redistributed to the owners?

Irrespective of the answers to these questions, considering the many specific initiatives that exist in Honduras, it is clear that allowing the coexistence of different incentives for participation in carbon sequestration with support from third parties (universities, businesses, etc.) could help to continue to promote early action in the country.

In this regard, the state should ensure that the rights of forest communities are not violated and prioritize their participation and compensation. This issue is addressed in the R-PP, which identifies the need for clear ownership and the possibility of receiving benefits from carbon sequestration in connection with

⁵³ Ibid.

landownership. However, it also stresses the need to define a number of aspects to respond to the demands of civil society, indigenous groups, and Afro-Hondurans who have expressed “their concern over the uncontrolled growth in the number of entities proposing to develop REDD+ projects, some of which are bringing forward proposals that put indigenous and Afro-Honduran peoples at a disadvantage.” Thus, one of the first REDD+ readiness measures identified was to adopt regulations establishing the requirements to be met by stakeholders who wish to participate in future mechanisms (markets or funds) “derived from UNFCCC negotiations,” such as voluntary markets.

4.4 RIGHTS TO BENEFITS

The R-PP mentions that SEFIN will participate in the REDD+ Subcommittee and that its involvement is essential because it is the entity responsible for approving REDD+ benefit sharing mechanisms. It also recognizes that “the benefits generated by REDD+ have not yet been determined, and for this reason a legal regulatory framework will need to be established.”

It adds that in indigenous territories and those inhabited by Afro-Hondurans, the “prevailing national and international laws and regulations will apply,” including ILO Convention 169.

The contracts for the projects reviewed in the previous section, primarily for payments for environmental services, repeatedly include the establishment of a board, committee or body with diverse representation which will generally be responsible for establishing the form of benefit sharing. In the case of REDD+, proposed as a national strategy, the REDD+ Subcommittee and the MNIACC will play an important role in establishing benefit-sharing priorities. With regard to the *modus operandi* of this distribution, when a new community-managed forest area is incorporated into REDD+, it is advisable to develop a basic agreement or protocol setting out the manner in which benefit sharing will take place.

4.5 INSTITUTIONS FOR BENEFIT SHARING

The R-PP does not establish which potential institutions should be involved in benefit sharing. Various solutions have been used for specific local activities in Honduras, including involving the municipal Water Boards or establishing bank trusts to make payments for environmental services under the supervision of a committee or board.

One of the activities called for in the R-PP is the establishment of an administrative body responsible for the distribution of goods. Although it is not clear what role the ICF would play in this process, it is expected to have at least some form of participation in monitoring and following up on projects implemented in the country, as well as in international negotiations concerning participation in REDD+.

4.6 RECOMMENDATIONS

- We recommend taking advantage of national REDD+ readiness processes to begin to integrate practical and technical lessons learned into decisions about the legal arrangements to be entered into with the landowners/possessors, specifically taking into account:
 - requirements for participation;
 - how consent will be given;
 - the obligations assumed by the parties;
 - incentives for emissions reductions by the managers of the forest;
 - legal capacity and how the forest managers can file complaints about illegal logging by third parties;
 - the payment or distribution of fees to maintain monitoring data at the national level;
 - the possibility of private individuals entering into agreements with third parties in the country or abroad;
 - distribution of liabilities for non-compliance and consequences;
 - support and training activities;
 - the form and mechanism of benefit sharing;
 - duties and obligations of each party; and,
 - assurance of compliance by both parties, among others.
- Special consideration should be given to the terms of any contracts developed in connection with the lands of indigenous and Afro-Honduran peoples, which should clarify the process of consent for their participation, the obligations of the parties, monitoring, distribution of liability, and support and training, especially in areas that overlap with protected areas. In that case, it is essential to continue to support and meet the commitments made with the MNIACC.
- Although the ownership of carbon is not defined in the legal framework, the law clearly links landownership to the benefits provided by natural resources. In this regard, it is relevant to consider the existing land tenure challenges in the country.
- The legal framework gives the state an important role in negotiating international carbon sequestration agreements, but it is not clear what powers individuals have and to what extent they can enter into agreements with third parties internationally. In any case, it is critical for the state to provide protection, training, and advice to vulnerable stakeholders. For example, training can be provided on international markets in order to ensure that the stakeholders are prepared to deal with potential buyers.
- The diversity of PES experiences in the country provides an interesting framework for analysis and gathering lessons learned, as PES is now a familiar concept. The possibility of regulating PES schemes through a resolution modifying the existing laws, or ideally through a new law or decree, would seem to be in keeping with development in Honduras. This could help to lay the groundwork for carbon sequestration contracts. However, the choice of which legal-technical aspects to apply will depend on what is determined in the country's REDD+ Strategy and should seek to achieve the objectives proposed by the stakeholders.
- It is also important to assess institutional viability in greater depth and consider how to provide transparency to ensure that the managed funds are distributed appropriately based on the type of scheme—whether decentralized or centralized—that is chosen.

5.0 FREE, PRIOR AND INFORMED CONSENT (OR CONSULTATION RESULTING IN COMMUNITY SUPPORT) IN HONDURAS

5.1 GENERAL INFORMATION ON FPIC

There is no universally agreed definition of FPIC; however, some countries, including the United States, understand FPIC to be a process of meaningful consultation⁵⁴. This section examines FPIC in the national legal context of Honduras and in relation to REDD+ in particular.

The consent of indigenous peoples for the use of natural resources on their territories was the subject of many past debates and confrontations, especially when the State adopted legislation and authorized hydropower plants and mining activities that impacted indigenous lands without previously consulting these groups. Although Honduras does not have a specific law on consultation and consent in its national context, it has ratified ILO Convention 169, which is often used as a benchmark for participation by indigenous peoples in REDD+, including in the R-PP.

Because there is no law that specifically addresses how to carry out consent or consultation for projects, various initiatives have been undertaken to clarify this. One of them has been the development of a locally developed Protocol by the Miskito people, which is useful as a working model for other people in Honduras and in other countries. Considering the future development of a REDD+ mechanism and the large number of hydropower projects and mining operations, it is important to make progress with these aspects.

The MNIACC, as a forum for indigenous and Afro-Honduran dialogue and participation in the REDD+ readiness process, will play a crucial role in defining the key elements involved in carrying out consent or consultation with these people and communities.

⁵⁴ The United States recognizes the importance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its provisions on FPIC, which it understands to refer to a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before actions addressed in those consultations are taken” (United States Department of State, 2010. Announcement of U.S. Support for the UNDRIP [Announcement] [http: www.state.gov/r/pa/prs/ps/2010/12/153027.htm](http://www.state.gov/r/pa/prs/ps/2010/12/153027.htm).)

5.2 LEGAL BASIS FOR PARTICIPATION, CONSULTATION AND CONSENT

Honduras does not have specific laws and regulations on consultation or consent, but it does have some provisions about this and has ratified and participated in relevant international instruments. An overview of the main international, regional, and national norms related to the consent and participation of indigenous peoples is provided below.

International	<p>Honduras is party to the main international treaties related to social and economic rights, including the following:</p> <ul style="list-style-type: none"> - International Pact on Civil and Political Rights; - International Pact on Economic, Social and Cultural Rights; and - International Convention on the Elimination of All Forms of Racial Discrimination. <p>Honduras ratified Convention 169 of the ILO on March 28, 1995⁵⁵. It also voted to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.</p>
Regional	<p>Honduras ratified the American Convention on Human Rights and has accepted the jurisdiction of the Inter-American Court of Human Rights⁵⁶.</p>
UN-REDD Program and FCPF Standards	<p>International REDD+ funding and technical support mechanisms have developed standards for stakeholder engagement, including the following:</p> <ul style="list-style-type: none"> - FCPF and UN-REDD: the “Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 - UN-REDD: “Guidelines on Free, Prior and Informed Consent,” January 2013 <p>FCPF:</p> <p>In the context of the FCPF, it is necessary to comply with the World Bank safeguards, which use a different definition of FPIC than the UNDRIP, defining it as “free, prior and informed consultation resulting in broad community support” (World Bank, Operational Policy 4.10 on indigenous peoples).</p> <p>Because the FCPF funds will be implemented through the UNDP, which is also the implementer of UN-REDD in Honduras, it is understood that the UNDP will implement FPIC in accordance with the applicable guidelines for UN-REDD.</p>
National	<p>National Constitution:</p> <p>(Art. 346) It is the duty of the State to enact measures to protect the rights and interests of indigenous communities in the country, especially of the land and forests where they are settled.</p> <p>Property Law, art. 95:</p> <p>In the event that the State seeks to exploit natural resources on the lands of (...) [indigenous] peoples, it must inform them and consult them about the benefits and harms that may be caused prior to authorizing any inspection or exploitation. In the event that any type of exploitation is authorized, the peoples must receive fair compensation for any damages which they may sustain as a result of such activities.</p>
Laws on participation and	<p>Forestry Law:</p> <p>(Art. 45) The right of indigenous and Afro-Honduran peoples over forest areas on</p>

⁵⁵ Within the framework of ILO Convention 169, indigenous and tribal peoples must be consulted on legislative or administrative measures that might affect them directly. The consultations should take place through appropriate procedures, in good faith, through representative institutions, and with the objective of achieving consent.

⁵⁶ On September 9, 1981, the instrument recognizing the jurisdiction of the Inter-American Court of Human Rights was presented to the OAS General Secretariat, in accordance with article 62 of the Convention.

consultation	land traditionally owned by them is recognized, in accordance with national laws and Convention 169 of the ILO. (Art. 113) Management plan for protected areas and wildlife. The ICF has the obligation to develop and update management and operating plans for protected areas (...) [to this end] it will involve SERNA, the municipalities, organized local communities, the private sector, and other civil society organizations, particularly peasant organizations, indigenous peoples and Afro-Hondurans living in the area.
--------------	--

There are also other relevant pieces of legislation for participation in environmental matters, but they do not refer to FPIC. These include the Land-Use Planning Law, which recognizes participatory management as a basis for integrated land-use planning (art. 29); the General Law of the Environment, which recognizes the right of local communities and private organizations to participate in actions for the defense and preservation of the environment and the rational use of the country's natural resources (art. 102); and the Forest, Protected Areas and Wildlife Law, which gives the ICF the mandate to develop management plans with the involvement of public institutions and organized local communities, particularly organized peasants, indigenous peoples, and Afro-Hondurans living in the area (art. 113).

A consultation and participation plan was established in the context of the R-PP process, and an agreement among SERNA, SEDINAFROH, INA, and CONPAH resulted in the commitment that “both parties shall work jointly to develop a draft bill for the implementation of the right to consultation and FPIC, as required by ILO Convention 169 and the United Nations Declaration on Indigenous Peoples.”⁵⁷

5.3 CONFLICTS OVER THE AUTHORIZATION OF HYDROELECTRIC POWER PLANTS AND MINING PROJECTS

The implementation of consent or consultation according to Honduras's national context has been the cause of various disputes in recent years. On the one hand, the indigenous and Afro-Honduran peoples argue that they have not been consulted about the development of draft legislation directly affecting them, such as mining and property laws. On the other hand, the development of large investment projects affecting indigenous territories has led to numerous allegations of rights violations, especially in the last decade. Most of these projects are hydropower projects, but there have also been conflicts related to extractive activities such as mining and the de facto eviction of many people as a result of tourism and drug trafficking activity. The indigenous peoples' allegations include the lack of consultation prior to authorizing these projects and the consequent risk to the integrity of their territories. In recent years, the government has made progress with the recognition of the territories of some peoples, such as the Miskitos.

5.4 BIO-CULTURAL PROTOCOL OF THE MISKITO INDIGENOUS PEOPLE: THE RIGHT TO FREE, PRIOR AND INFORMED CONSENT IN OUR TERRITORY OF THE HONDURAN MOSQUITIA

A significant step forward for the implementation of consent or consultation has been the development of the **Muskitia Bio-cultural Protocol**. The R-PP acknowledges that consultation events for the Miskito people will take as a basis this protocol, particularly to create capacities towards obtaining FPIC.⁵⁸ Additionally, the UNDP's Readiness Preparation Project Document signals that “in Honduras there is already

⁵⁷ Act of commitment to compliance among the Secretariat of Natural Resources and the Environment (SERNA), ICF, the Secretariat for the Development of Indigenous Peoples and Afro-Hondurans (SEDINAFROH), INA, and CONPAH and its federations. Tegucigalpa, Honduras, January 9, 2013.

⁵⁸ R-PP, at 57.

a mechanism for pre-consultation for the Miskito people, which could be used as a reference for the other indigenous and Afrohonduran peoples.” One recent proposal in the country is enacting a framework law on FPIC and including different mechanisms to consult different groups through the regulations that develop such a law (UNDP 2014a).

The Protocol emerged in response to concerns of the Miskito indigenous groups about the effects that the various projects to be implemented would have on their territories. With the support of IUCN, BMZ, and Natural Justice, they established a Protocol to be followed before initiating any activity in their territory. The representatives of the Miskito people developed this Protocol as a methodological tool that respects their decision-making structures and mechanisms and ensures respect for the collective right to FPIC in projects and decisions affecting the indigenous communities and their natural resources, including REDD+ initiatives. The process consists of seven steps that should be taken in the various stages of the project, i.e. in discussing an idea for a project that would affect indigenous communities; in participating in the development of a detailed plan; in implementation and monitoring; and in evaluation (Mosquitia Asla Takanka-Unidad de la Mosquitia-MASTA, 2012, page 43).

This Protocol has been considered a valuable tool for the development of consultation and consent processes with the country’s indigenous peoples, but it should not be regarded as the sole mechanism, because each indigenous people has different characteristics and world views that should be taken into account in developing consent protocols (Mendoza Salamanca, 2012).

5.5 FPIC AND THE NATIONAL REDD+ STRATEGY

As explained earlier, the process of preparing the draft Strategy to present to the FCPF had been initiated by the government through the REDD+ Subcommittee in 2011, but the process was suspended in order to establish a formal dialogue between CONPAH and representatives of the government. That marked the beginning of a process of developing closer relations, including involving CONPAH in the development of the REDD+ document. In 2013, agreement was reached on the steps involved in consultation, and the decision was made to create the MNIACC⁵⁹. However, when a new draft was presented, COPINH and other indigenous and black communities and organizations such as OFRANEH stated that they are not part of CONPAH and have not been involved in the REDD+ readiness process. On the contrary, they publicly rejected the plan to implement REDD+ in Honduras. When the final draft of the strategy was presented, Honduras was advised to establish links with indigenous and Afro-Honduran groups that have not actively participated in the process.

The R-PP establishes that “Honduras recognizes the right of indigenous peoples to be duly consulted, in accordance with the standards defined by ILO Convention 169, the UNDRIP, the Convention on Biological Diversity, and the Nagoya Protocol, required by the interested parties, on key aspects of the REDD+ mechanism resulting from the UNFCCC agreements, together with national laws, **including the right to give or deny consent for the proposed activities.**” Furthermore, as the implementing partner agency, the UNDP has stated that it will implement the project in line with the FCPF/UN-REDD Guidance Note for REDD+ Countries: Establishing and Strengthening Grievance Redress. Moreover, the Guidelines for Stakeholder Participation and the UN-REDD Program Guidelines on FPIC apply.

Efforts to improve inter-institutional integration in REDD+ readiness include, among other activities, the implementation of the right of indigenous and Afro-Honduran peoples to FPIC. As a safeguard, the R-PP establishes that a consultation process based on the right to FPIC will be incorporated in all stages of the

⁵⁹ The MNIACC, led by CONPAH and its federations, is recognized as a platform for indigenous dialogue and advocacy to monitor the process of REDD+ readiness and future REDD+ implementation. It consists of a political committee and a technical committee as independent bodies applying their ancestral worldview to guide the process of implementing the NCCS and the development of the REDD+ Strategy. The MNIACC will have a forum for political and technical dialogue with the REDD+ Subcommittee.

process, from the design, development and planning of the REDD+ Strategy to the implementation and development of pilot projects, provided that they are accepted by the peoples. To support this future process, “formal mechanisms will be established between governmental institutions and CONPAH, but the FPIC processes will be initiated by the MNIACC” (R-PP). Thus, the MNIACC will play a critical role throughout the process. The R-PP provides detailed information on the multiple tasks this body will perform and also provides for the possibility of continuing to involve other peoples in the roundtable.

The R-PP establishes that, as part of the process of involving indigenous and Afro-Honduran peoples, the MNIACC will develop a binding FPIC protocol to ensure the right to FPIC throughout the life of the project. The document recognizes the seven steps established in the Muskitia Bio-cultural Protocol. As mentioned above, it is possible that the bio-cultural protocol developed for the territory of the Honduran Mosquitia may be promoted as an initiative that can be expanded to all of the country’s indigenous territories, as long as it is adjusted to the world views of the different peoples and agreed upon with the indigenous federations.

Local workshops, general coordination meetings, and inter-ethnic REDD+ roundtables are planned as part of the capacity-building strategy. Regional and national dialogues and consultations on institutional and regulatory adaptation are expected to help clarify:

- powers and responsibilities for climate change and REDD+;
- property rights over carbon and other forest services;
- adoption of national and international instruments on climate change;
- tax and financial legal framework;
- FPIC;
- equitable benefit sharing;
- conflict resolution;
- ownership and tenure of indigenous and Afro-Honduran lands and territories;
- system of sanctions against corruption and fraud; and
- sectoral and policy adjustments as deemed necessary.

The R-PP also identifies elements to be considered during the REDD+ readiness process related to protection and consent, including:

- consistency with indigenous peoples’ projects to defend their territories;
- guarantee of permanence of acquired property rights to their territories;
- guarantee of respect for their ancestral rights to their territories;
- respect for their own worldview, autonomy, and self-determination;
- control and monitoring of voluntary markets where the state guarantees respect for the basic rights of the communities;
- guarantees for fair and equitable benefit sharing;
- recognition of property rights to the natural resources on their territories and to the benefits derived from the services they provide; and

- legal safeguards.

The R-PP also envisages the creation of institutional mechanisms for complaints and monitoring of the consultation process to deal with possible cases of abuse or violation of rights.

The process of preparing the R-PP is expected to produce a calendar, methodology, target groups, and all of the other elements required to carry out an FPIC process to develop a future REDD+ Strategy for Honduras.

5.6 KNOWLEDGE OF RIGHTS

The different indigenous peoples seem to have different situations in terms of land tenure, the organization of authorities and autonomy, as well as knowledge of their rights. As already mentioned, there are evident difficulties in implementing the legal framework to guarantee their rights—for example, in consultations for large-scale projects affecting their territories. However, their growing participation in various processes and their interventions—including bringing cases before the Inter-American Court on Human Rights—show that their activity and knowledge of their rights are increasing.

5.7 RECOMMENDATIONS

The following recommendations will help to clarify the consent process and its relationship to secure land and resource tenure.

- Promote measures and processes to help establish channels for ongoing dialogue with indigenous representatives and the government in order to peacefully and constructively address existing concerns even after the UN-REDD program ends
- Strengthen property rights and their recognition in the lands of indigenous and Afro-Honduran peoples. There are still territories to be titled and regularized, and it is critical to ensure that collective ownership is structured in a way that ensures the preservation of these peoples' cultures and that minimizes the risk of individual parcels being sold, which would lead to the fragmentation of the territories.
- Clearly define consultation, communication, participation and training strategies in a participatory manner and from the outset, with strong involvement by the MNIACC. In this regard, it is important to increase information availability.
- Build upon the decision to create MNIACC, which could lead to the coordination and creation of suitable dialogue and decision-making forums for the process. The representativeness and legitimacy of the participants in this roundtable should be ensured and guaranteed, and their participation should be facilitated both financially and logistically.
- Ensure that the participation of its members takes place through clearly established mechanisms and strong involvement in decision making, particularly on issues of relevance to the territories of these communities
- Develop consultation and participation plans that include conceptualizing the steps needed to carry out FPIC in the national context. The development of a Protocol by the Miskito people is a valuable experience.
- Establish differentiated strategies for consultation, participation, decision-making, training, etc. to promote the sustainability of the process and its transparency

6.0 CONCLUSIONS

Honduras is highly vulnerable to climate change, and its forests have great potential not only to adapt to its consequences, but also to contribute to climate change mitigation.

The lessons learned from past forest protection experiences, including PES, together with a review of existing national policies, suggest that the success of Honduras's approach to REDD+ implementation will be closely linked to finding appropriate solutions to problems associated with land and resource tenure. Ownership, possession, and occupation of land and forests will have a significant impact on defining which stakeholders can participate in REDD+, as well as the procedures for negotiation and sharing of the benefits the stakeholders may receive and the responsibilities they will have.

Currently, there is no national REDD+ mechanism, but preparatory work for REDD+ implementation is under way, supported by, among other initiatives, FCPF and GIZ.

This Resource Tenure and Sustainable Landscapes Assessment conducted for the TGCC project examined the current obstacles and opportunities for REDD+ implementation in Honduras through:

- a tenure-based stakeholder analysis;
- an assessment of tenure under Honduras's present policies;
- an analysis of rights to receive benefits based on ownership of resources; and,
- an assessment based on Honduras's current legal framework for consultation and consent.

Because specific sites have not yet been identified for the implementation of REDD+ activities, the analysis looks at the country as a whole. However, the R-PP mentions that an estimated 70 percent of the country's broadleaf forests are located in indigenous and Afro-Honduran territories. Other estimates indicate that about 40 percent of the country's territory is covered by forests, of which 33 percent are located in indigenous territories, and 32 percent in protected areas. Almost all of the tropical forest is found in the Mosquitia, which is inhabited by around 75,000 indigenous families from the Miskito, Garifuna, Tawahka, Pech, and Tolupan peoples, as well as afro-descendant groups (CABAL 2010). Studies conducted in the areas of greatest deforestation have identified areas of potential value for REDD+ implementation.

Regardless of which areas are chosen, Honduras will face various challenges related to land tenure, a concern that is also reflected in two 2038 targets the country has included in its Country Vision document: to halve the number of peasant families without access to land, and to reduce to less than 5 percent the number of land parcels without property titles.

Tenure as it affects REDD+ stakeholders

A variety of stakeholders need to be taken into account in REDD+ interventions in Honduras, including indigenous peoples, Afro-Honduran communities, large- and small-scale farmers, landowners and the state.

Indigenous and Afro-Honduran groups have significantly influenced the national dialogue on REDD+, including through the creation of a National Indigenous Roundtable on Climate Change. However, in general, the land tenure situation of indigenous groups is insecure; there are challenges not only in terms of recognition of their rights to the lands they inhabit, but also in terms of respect for these rights in practice, because third-party invasions and occupation and illegal logging in their forest areas are common problems. The Property Law recognizes the "right of indigenous and Afro-Honduran peoples over lands traditionally owned by them and not prohibited by the law" (art. 93, Property Law). The law also recognizes the granting

of “collective” titles to these peoples, as well as their traditional form of communal property ownership (art. 94). Although the property will be inalienable, unattachable and imprescriptible (art. 100), the possibility exists for the communities themselves to **put an end to this communal regime, authorize leasing** to third parties, or authorize **other kinds of contracts** that enable the community to participate in investments contributing to its development (art. 100). This, together with other factors, may potentially jeopardize the integrity of indigenous territories during REDD+ implementation.

Based on the 1992 Agricultural Modernization Law, lands were titled in the name of certain indigenous groups, but these titles were limited to granting ownership rights to inhabited areas, excluding the communities’ functional areas (Galeana and Pantoja, 2013). Steps to enhance the regularization of the land tenure seem to be under way as, more recently, the Miskito people were granted titles that include their common areas and give them inalienable and non-assignable land rights. REDD+ could affect the traditional livelihoods of these forest-dependent communities and their aspirations for their land claims, particularly in areas where their ownership has not been recognized. Therefore, ensuring that the rights to their lands are clearly defined is crucial.

The situation of farmers and rural landowners is also complex and varied. Often, poor peasant farmers have been involved in the deforestation of dense forests for subsistence farming and other uses. Small farmers are especially vulnerable to REDD+ implementation, particularly those living in poverty, because preventing them from using forest resources or limiting their small-scale agricultural activities could have a significant impact on their livelihoods. Moreover, given the food sovereignty problems in the country, REDD+ implementation should take into account the need to combine land uses that allow the sustainable development of these communities. With respect to large landowners, it is essential to work on raising awareness about key forest issues, and to consider how to best involve them, including through forest protection and the provision/financing of environmental services.

Honduras has been characterized by a high concentration of productive lands in the hands of a few owners,⁶⁰ as well as by a large number of minifundios, peasant-owned smallholdings measuring less than 1 ha. This should be taken into account in developing a REDD+ scheme in order to ensure equitable participation by smallholders. There is a very high level of informal land occupation (USAID 2010) and peasant migration, which makes land regularization a huge challenge in Honduras. When state-owned forest areas are titled as such, the Forestry Law allows the state to enter into contracts of varying durations with the rural occupants for the usufruct, management, or co-management of the land. This approach may be useful in managing land tenure problems related to REDD+.

These stakeholders are included in the REDD+ dialogue through representation on the REDD+ Subcommittee, which was created in 2010 and serves as a forum for stakeholder dialogue and exchange. Efforts should be made to include the government and all relevant economic sectors, such as large infrastructure and mining in this process.

Tenure and forest policies

One of the greatest challenges REDD+ implementation will face in Honduras is the land tenure situation. Although the legal framework includes legislation linking ownership of forest resources to landownership, there are still various challenges from the point of view of both formal laws and regulations and their application in the country. The main challenge is that land tenure in the country is characterized by a diverse mosaic of occupations and applicable laws. In practice, the high level of irregular landownership has led the country to adopt various laws aimed at improving landownership regularization, and it is implementing a World Bank-financed program to promote land titling. However, this has given rise to a wide range of applicable laws and institutions with responsibility for regularization, which makes it harder for the laws and regulations to achieve their objectives. The disadvantages of this dispersion include the existence of

⁶⁰ It has been estimated that approximately 3.5 percent of agribusinesses account for more than 50 percent of the agricultural land in use and that 10 families own more than 80 percent of private property in Honduras (GIZ, report).

overlapping provisions, gaps in the regulation of institutional coordination, and the absence of a supervisory entity or mechanism to ensure that the institutions work in a coordinated manner.

Furthermore, the existence of laws that leave open the possibility of expropriating land despite the existence of firm property rights is another source of uncertainty for REDD+ implementation in Honduras. For example, one constraint for REDD+ is that private property may be acquired by a third party through acquisitive prescription, supplementary title, or by occupation in accordance with the numerous laws and regulations. Although the Agricultural Modernization Law stipulates that people who deforest forest lands to convert them to agricultural uses after the effective date of this Law will be excluded from the possibility of being granted land (art. 15), it is difficult to ascertain the extent to which this provision has been respected by the various institutions involved in implementing the different laws relating to land tenure. As a consequence, while various provisions exist to prevent standing forest from allowing legal interpretation that the land was abandoned (and therefore available for acquisition), rules around proof of possession for land acquisition (cutting of timber, plantings or sowings, art. 904, Civil Code) would need to be modified to substantially reduce this risk. In any case, the implementation of REDD+ should give legal certainty to farms participating in forest conservation regarding these risks, which could result in the loss of ownership or occupation of a farm. The fact that for almost 20 years the conservation of natural forests was considered grounds for expropriation for agricultural reform purposes evidences that this may not be a minor issue to consider.

With regard to incentives, the 2007 Forestry Law contains various incentives for forest protection, including the goal of allocating 1 percent of the national GDP to a dedicated fund. However, in practice, their implementation is limited. Since 1974, attempts have been made to include organized peasants in the management and use of the country's forest resources, but with limited success. There are also various perverse incentives in sectoral legislation which act in opposition to the incentives and objectives of the Forestry Law.

Tenure and carbon rights

Carbon rights are not clearly defined in Honduras's legal framework. However, the legislation refers to carbon sequestration as an environmental service. Although the legal framework does not establish specific carbon rights, there are laws that clearly link the benefits and rights to forest and natural resources to the owner of the land. Therefore, the potential benefits of REDD+ can be legally linked to the owner of the resources. For this reason, it is important to clarify land tenure before implementing a project. In practice, there are experiences in the country with co-management contracts and usufructs allowing the managers and inhabitants to benefit from the products of trees, including from compensation from environmental services that forests provide.

The shape the country's REDD+ mechanism takes will greatly influence the legal tools used to implement it. These include, but are not limited to, usufructs, conservation easements, trusts, and private reserve schemes. The mechanism could be conceived as a more decentralized process, starting with a "nested" approach, or as a centralized mechanism. Given the decentralization processes that have taken place in Honduras, the complex land tenure situation, and the various social conflicts that exist, the first alternative may be the best suited.

Once the land and resource tenure issues are clarified and the participants in REDD+ give their consent, the government can legally engage with international buyers to negotiate carbon credits generated by REDD+. This is supported by the Honduran legal framework, which gives the state clear authority for environmental protection and the rational use of natural resources. In addition, the Forestry Law gives the ICF broad powers to both regulate the use of forest resources through management plans and retain ownership of national forest areas. Although the legal framework gives the state an important role in negotiating international carbon sequestration agreements, it is not clear what powers individuals have and to what extent they can enter into agreements with third parties internationally. Further clarification of this issue is needed.

There are also a number of factors that could make compliance with international carbon sequestration agreements difficult, including:

- a diverse and extremely fragmented legal framework, which complicates implementation in the context of limited institutional capacities, particularly in the forest sector;
- implementation difficulties on the ground, and the need to increase monitoring and the systematization of experiences; and
- difficulties related to land tenure in general throughout the country, with serious social conflicts in some areas.

It is therefore recommended that the development of REDD+ agreements develop key aspects such as the management of benefits and the liability of actors/institutions/the state for non-compliance. From the perspective of communities assuming forest management obligations, it should be kept in mind that potential non-compliance may be caused not only by the communities themselves (in the case of intercommunity property, for example), but also—and this is where the greatest danger lies—by third-party land invasions and illegal logging leading to situations of non-compliance not attributable to the inhabitants/community/landowners, but having an effect on carbon sequestration outcomes.

Tenure and consultation

The consent of indigenous peoples for the use of natural resources in their territories has been the subject of many debates and confrontations in recent years, especially when the state has adopted legislation and authorized hydropower plants and mining activities that affect indigenous lands. Although Honduras does not have a specific law on consultation or consent in its national context, it has ratified ILO Convention 169, which is often used as a benchmark for participation by these peoples in REDD+, including in the R-PP where the intention to promote FPIC is clearly stated. Moreover, the intergovernmental initiatives under way have adopted applicable standards specifically for participation in REDD+.

Because there is no law that specifically addresses how to carry out consent or consultation in the case of projects, various initiatives have been undertaken to clarify this. One of them has been the development of a Protocol for FPIC by the Miskito people, which is useful as a working model for other people in Honduras and in other countries.

Finally, it is worth noting the role that the MNIACC is playing as a forum for indigenous and Afro-Honduran dialogue and participation in the REDD+ readiness process, especially in defining the key elements involved in carrying out consent or consultation with these peoples and communities.

Conclusions

As studies of land tenure in other countries in the region have also shown, the importance of considering the challenges and recommendations mentioned in this report is not limited to REDD+ or future funding for forest carbon initiatives. Being able to clearly define ambiguities related to land and resource tenure will help promote investment, reduce the level of conflict, and improve land management in Honduras. Some of the options presented are easy to implement, while others will require a longer-term political commitment, investment or a higher level of trust between the government and the rural population. The land tenure reforms needed for the successful implementation of REDD+ can be introduced gradually and should form part of a continuous process to build trust among the wide range of stakeholders.

REFERENCES

- CABAL. 2010. Identificación de Actores Internos y Externos relevantes, relacionados al Programa REDD en Centroamérica y República Dominicana.
- Cáceres, C., Alvarenga, A., Matute, M. E., Ramirez, M. A., & Vallejo Larios, M. 2014. Mejora de la Gobernanza de la Tierra en Honduras. Implementación del Marco de Evaluación de la Gobernanza de la Tierra, Programa de Administración de Tierras de Honduras, World Bank, Vols I & II.
- CATIE. 2006. Modelo de contrato por servidumbre hídrica y ambiental para la conservación de la fuente de agua ... entre el municipio de Valle de Ángeles y la Junta de Agua ... Documento borrador. COCOH, 2008. Reforma Agraria, Agricultura y Medio Rural en Honduras.
- Comisión Interamericana de Derechos Humanos, CIDH presenta caso sobre Honduras a la Corte IDH, 11 de Octubre de 2013. (Caso No. 12.761 Comunidad Garífuna Punta Piedra y sus miembros, Honduras.)
- Comisión Interamericana de Derechos Humanos, Informe No. 76/12, Caso 12.548, Fondo comunidad garífuna triunfo de la cruz y sus miembros, Honduras.
- CONPAH, letter sent to the Minister of SERNA on February 8, 2012, available at: <https://www.forestcarbonpartnership.org/honduras-0>
- Convenio de Comanejo “Área de Manejo de Hábitat/Especies Colibrí Esmeralda Hondureño”, signed by the ICF, the Secretariat of Public Works, Transport and Housing (SOPTRAVI), the National Defense Secretariat (SEDENA) and the municipalities of Olanchito and Arenal.
- El País, Gilda Silvestrucci, Campesinos de Honduras: les roban la tierra, les quitan la vida, February 7, 2013.
- FAO, Tendencias del derecho forestal en América y Asia, p. 34, 1999.
- Forest Trends. 2013. Community Forestry in Honduras: A Path towards Better Governance, Information Brief N°8.
- Galeano, F., Pantoja, E. Strengthening Indigenous Peoples’ Land Tenure Governance: the Case of the Miskito People in Honduras, Paper prepared for presentation at the “Annual World Bank Conference on land and poverty,” Washington DC, April 8-11, 2013.
- GIZ. 2010. Pueblos Indígenas en Honduras.
- Government of Honduras. 2013. Informe sobre gestión integral del riesgo de desastres en Honduras 2013.
- Government of Honduras. 2013. Readiness Preparation Proposal (R-PP).
- Inter-American Development Bank (IADB). 2008. Country Strategy.
- ICF. 2011. Anuario Estadístico Forestal 2011.
- International Work Group for Indigenous Affairs (IWGIA): The Indigenous World, Copenhagen. 2009. p.108
- Instituto Nacional Agrario (INA). 2010. Título Definitivo de Propiedad Intercomunitario a favor del pueblo misquito ubicado en Katainasta.

- KIVLAK/GIZ. 2010. Documento de trabajo Pueblos Indígenas en Honduras. Unidad Coordinadora Pueblos Indígenas en América Latina y el Caribe.
- La Tribuna, Gobierno otorga títulos de propiedad a cinco grupos indígenas misquitos, September 13, 2013.
- Logging off. 2011. ¿El Primer AVA de Centroamérica? Perspectivas del FLEGT en Honduras.
- Mairena, R. 2014. Apoyo a la Operacionalización del Marco Jurídico Forestal y del Programa Nacional Forestal de Honduras FNPP-Honduras, Guía Metodológica para la Operacionalización del Proyecto, Tegucigalpa, Honduras, 2005.
- Manual de Regularización. 2011. PRO-245-RE, Proceso UCP- PATH.
- McSweeney, K., & Pearson, Z. 2013. Prying Native People from Native Lands: Narco Business in Honduras, NACLA Report on the Americas 46(4).
- Mejías Esquivel, R., and O. Segura Bonilla. 2002. El pago de servicios ambientales en Centroamérica, World Resources Institute (WRI).
- Mendoza Salamanca, T., and S. Schielmann. 2012. Consentimiento Libre, Previo e Informado en el Proceso Nacional de Preparación para REDD+ en Honduras, INFOE.
- Mosquitia Asla Takanka-Unidad de la Mosquitia. 2012. Protocolo Bio-cultural del Pueblo Indígena Miskitu.
- PATH. 2011. Estrategia de equidad de género para el proceso de titulación de tierras en comunidades Miskitas.
- Proyecto pico bonito: <http://www.bosquespicobonito.com/es/about/location.php>.
- Salamanca, T. 2012. Indigenous Participation and Rights in the REDD/CCAD/GIZ Program in Central America, INFOE.
- Sanhueza, J.E., and M. Antonissen. 2014. REDD+ en América Latina, Estado actual de las estrategias de reducción de emisiones por deforestación y degradación forestal, CEPAL.
- Santos Zelaya, J.A. 2008. Tendencias de la propiedad forestal, la tenencia de los recursos forestales y los acuerdos institucionales en Honduras: ¿contribuyen a una mejor gestión forestal y a la reducción de la pobreza?
- Secretaría de Agricultura y Ganadería de Honduras. 2014. Estatus de la Gestión de riesgos climáticos en el sector agroalimentario y su importancia para la seguridad alimentaria y nutricional en Honduras.
- SERNA. 2013. Avances REDD+, Reunión del Comité de Participantes 14. Fondo Cooperativo para el Carbono de los Bosques (FCPF), presentation.
- Testimonio de Escritura Pública por Constitución de Servidumbre Ecológica o Servidumbre Voluntaria de Conservación, entre el señor... (Dueño de predio) y el señor... (Presidente de AMUPROLAGO). AMUPROLAGO. Confidential document.
- Torrealba Munizaga, J.A., F. Milla Araneda, C. Pérez Alvarado, P. Emanuelli Avilés, Mecanismos Nacionales de Compensación en Centroamérica, Artículo N° 18, CCAD/GIZ.
- UNDP. 2014. Readiness Preparation Proposal Assessment Note, Honduras.
- UNDP. 2014a. Project Document. Readiness Preparation Proposal, Honduras.
- UNDP. 2014b. Human Development Report 2014. Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience. 2014.

- Unidad Técnica de MASTA. 2013. Estudio Antropológico de los Concejos Territoriales de Wamakklisinasta, Truktsinasta, Lainasta, Watiasta y Bamiasta.
- UN-REDD. 2013. Guidelines on Free, Prior and Informed Consent.
- UN-REDD. 2012. Tenure of indigenous peoples territories and REDD+ as a forestry management incentive: the case of Mesoamerican countries.
- USAID, GIZ, 2012?. Sistematización de experiencia de incremento de capacidades en el enfoque de género en REDD+.
- USAID. 2010. Honduras-Property Rights and Resource Governance Profile.
- Vallejo Larios, M. 2011. Evaluación Preliminar sobre Causas de Deforestación y Degradación de Bosques en Honduras, CCAD/GIZ.
- Vallejo Larios, M. 2013a. Análisis del Marco Legal e Institucional vigente, Propiedad del Carbono y Tenencia de la Tierra para implementación de REDD y otros mecanismos de compensación en Honduras, CCAD/GIZ.
- Vallejo Larios, M. 2013b. Análisis del marco legal para el aprovechamiento sostenible y comercio de madera en la región de Mesoamérica: Caso Honduras, IUCN.
- Vallejo Larios, M. 2014. Obstáculos y Opciones Legales Para La Implementación de Iniciativas REDD+ en Honduras, Programa ONU-REDD.
- Vallejo Larios, M., and L. Ferroukhi. 2003?. Honduras. Municipios y Bosques: paradigma para el desarrollo sostenible, draft.
- Vallejo, C., M. Alvarado Leverón, and K. Ramos. 2013. Los Bosques, Aliados frente al Cambio Climático, Programa de Fomento al Manejo Sostenible de Recursos Naturales y Desarrollo Económico Local (PRORENA).
- World Bank. 2014. BM: Seguro para responder a desastres naturales en Honduras y Nicaragua, June 18, 2014, Press Release.

LAWS AND CASES

Act of commitment to compliance among the Secretariat of Natural Resources and the Environment (SERNA); the National Institute of Conservation and Forestry Development, Protected Areas and Wildlife (ICF); the Secretariat for the Development of Indigenous Peoples and Afro-Hondurans (SEDINAFROH); the National Agrarian Institute (INA); and the Indigenous Peoples Confederation of Honduras (CONPAH) and its federations. Tegucigalpa, Honduras, January 9, 2013. Decree-Law on Climate Change, available at: <http://www.congresonacional.hn/phocadownload/Dictámenes2011/dictamen%20ley%20cambio%20climatico.doc>.

Agrarian Reform Law, Decree 170 of August 30, 1974.

Coffee Growers Protection Law, Decree 199-95 of December 21, 1995.

Constitution of the Republic, Decree 131, La Gaceta of January 20, 1982.

Convention for the Protection of the Ozone Layer, Decree 73-93, La Gaceta of August 21, 1993.

Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, Decree 26-94, La Gaceta of July 30, 1994.

Convention on Biological Diversity, Decree 30-95, La Gaceta of June 10, 1995.

Cooperatives Law of Honduras, Decree 65-87 of April 30, 1987.

Creation of a Specialized Ecosystem and Environment Unit, Decree 41-2011 of June 27, 2011.

Electricity Subsector Framework Law, Decree 158-1994, La Gaceta of November 26, 1994.

Forced Expropriation Law, Decree 113 of April 9, 1914.

Forest, Protected Areas and Wildlife Law, Decree 98-2007, La Gaceta of February 26, 2008.

General Environment Law, Decree 104-93, La Gaceta of June 30, 1993.

General Law of the Environment, Decree 134-93, June 30, 1993.

General Mining Law, Decree 292-1998, La Gaceta of February 6, 1999.

General Regulation of the Forestry Law, Protected Areas and Wildlife, Executive Decision 031-2010 of August 31, 2010.

General Water Law, Decree 181-2009 of August 24, 2009.

Inter-institutional Committee on Climate Change, Executive Decree PCM-022-2010.

Land-Use Planning Law, Decree 180-2003, La Gaceta of November 30, 2003.

Law for Modernization and Development of the Agricultural Sector, Decree 31-92, La Gaceta of April 6, 1992.

Law for Planning of Tourism Zones, Decree 968-1980, La Gaceta of July 22, 1980.

Law for the Establishment of a Country Vision and the Adoption of a National Plan for Honduras, Decree 134-90, La Gaceta of June 29, 2004.

Law for the Promotion of Electricity Generation with Renewable Resources, Decree 85-98, La Gaceta of February 1, 1999.

Law of Municipalities, Decree 134-90, La Gaceta of November 19, 1990.

Law on the Acquisition of Urban Real Estate in the Areas Demarcated in Article 107 of the Constitution of the Republic, Decree 90-90, La Gaceta of August 29, 1990.

National Climate Change Strategy, Legislative Decree 216-2010, La Gaceta, December 2010.

National Committee for Environmental Goods and Services, Executive Agreement No. 113-2002.

National Strategy for Environmental Goods and Services, Agreement No. 990-2007.

Operating and Functional Regulations of the Inter-Institutional Committee on Climate Change of the National Climate Change Directorate and the Inter-Institutional Technical Committee on Climate Change, Draft under Review.

Organic Law of the ZEDEs, Decree 120-2013, La Gaceta of September 6, 2013.

Property Law, Decree 134-90, La Gaceta of June 29, 2004.

State Policies for Integrated Risk Management in Honduras (PEGIRH), Executive Decree PCM-051-2013, La Gaceta of November 26, 2013.

United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Decree 35-97, La Gaceta of June 24, 1997.

United Nations Framework Convention on Climate Change, Decree 26-95, La Gaceta of July 29, 1995.

U.S. Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

www.usaid.gov