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Carbon Property Rights and Natural
Resources

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Outline

- What is a 'right'?
- What are carbon property rights?
- Why are carbon rights important?
- Forest rights flexibility
- Wider perspectives

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Rights (and responsibilities)/1

- The word 'right' is used in different ways to refer to legal, social or ethical principles
- According to custom in Melanesia rights and responsibilities ALWAYS remain linked; neither one exists in a vacuum.

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Carbon property rights

- Carbon property rights are best understood as rights over property. Carbon rights turn carbon into a commodity and allow it to be traded.
- Under the common law legal system (as applies in PNG), the focus tends to be on whether or not carbon and carbon credits qualify as 'property rights'.
- Customary tenure is based on accepted local rules of use and inherited kinship group rights. From this point of view, the people living in and around a forest and holding rights to it are the owners, not the State
- In this case carbon rights can be seen as a 'new' kind of property, one that cannot be seen or tasted or otherwise perceived. In many ways carbon rights can be compared to intellectual property rights (see below)

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Why are carbon rights important?

- REDD+ is based on the right to benefit in various ways from reducing forest-based emissions of green-house gases
- But who owns this rights? This question raises a number of legal issues including how to define and allocate carbon rights in national REDD+ frameworks
- In Melanesia, rights to forests are most usually held by custom by clan groups, so a *prima facie* case can be made that the carbon sequestered in trees rights are part of the trees and therefore the carbon rights are also owned by those clan groups as are the forests.

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Forest rights flexibility

- How forest rights (including carbon) are worked out should remain flexible to some extent. Examples:
- Nepal – forest user groups have user rights not ownership (held by the State). Their carbon rights should be linked to use rights.
- In PNG, where clans have customary ownership rights, carbon rights are linked to land groups, not those who have user rights.

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Wider perspectives/1

- A Manila 2010 REDD workshop reached consensus that a strictly conventional and legalistic approach to carbon rights, seeing carbon as a severable and transferable property right may not be appropriate for many countries in the Asia-Pacific region
- Participants from forest-dependent communities rejected the idea that carbon can be divided and sold separately from other elements, products and services of a forest which itself is the source of livelihoods, subsistence and income for many individuals and communities.
- Carbon rights should not be just about property rights, but needed to be integrated into a comprehensive package of rights and entitlements.

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Wider perspectives/2

- So REDD+ activities and associated carbon rights need to be placed in a framework of safeguards in the interests of customary resource owner groups.
- Our discussions during yesterday stressed that forest and carbon should not be seen in themselves but part of a larger, more integrated approach to sustainable resource management and livelihoods.
- The development of intellectual property rights over traditional biodiversity knowledge and negotiations on Access and Benefit Sharing under the 1992 Convention on Biological Diversity.

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Wider perspectives/3

- After 6 years of discussions a protocol on access and benefit sharing was signed in October 2010
- This protocol affirmed the rights of countries and communities over their genetic resources and the fair and equitable sharing of benefits from the use of these resources

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Outcomes/1

- The legal view of carbon rights as a new form of property should not be the only way through which carbon rights are considered. Other frameworks such as indigenous or human rights approaches should also be seen as valid options to explore
- Legal rights and responsibilities for carbon need to be clear for all stakeholders
- National legislation (if there is any) over carbon rights need to incorporate local and customary management and ownership systems
- Carbon projects need to specify benefit-sharing mechanisms for and within communities

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Outcomes/2

- Full access to information in appropriate forms and languages is essential; FPIC should apply in all cases and anything that fails this test should not proceed.

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How to proceed?

- Carbon property rights need to be studied and better understood. A study proposal for PNG, Solomons and Vanuatu is being prepared and funding is being sought.
- Sub-national structures and processes for involvement in REDD+ and PES will shortly begin in Morobe Province.
- A lack of clear, transparent and real information has been and continues to be the major stumbling block for PNG citizens at large.
- The biggest challenge is to design and implement a system that puts customary resource owners and their communities as the first priority.