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PANAMA RESOURCE TENURE AND SUSTAINABLE LANDSCAPES ASSESSMENT

TENURE AND GLOBAL CLIMATE CHANGE (TGCC)

SEPTEMBER 2014

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ACRONYMS AND ABBREVIATIONS

	English	Spanish
ACP	Panama Canal Authority	Autoridad del Canal de Panamá
ANAM	National Environment Authority	Autoridad Nacional del Ambiente
ANATI	National Authority for Land Administration	Autoridad Nacional de Administración de Tierras
ARAP	National Authority for Aquatic Resources	Autoridad de los Recursos Acuáticos de Panamá
CBO	Community-Based Organization	Organización de Base Comunitaria
CCAD	Central American Commission on Environment and Development	Comisión Centroamericana de Ambiente y Desarrollo
CCBS	Climate Community and Biodiversity Standard	Estándares de Clima, Comunidad y Biodiversidad
CDM	Clean Development Mechanism	Mecanismo de Desarrollo Limpio
CN	National Constitution	Constitución Nacional
CONACCP	National Committee on Climate Change	Comité Nacional de Cambio Climático
COONAPIP	National Coordinating Agency for Indigenous Peoples	Coordinadora Nacional de Pueblos Indígenas de Panamá
DE	Executive Decree	Decreto Ejecutivo
DEMAFOR	Department for Forestry Development and Management	Departamento de Desarrollo y Manejo Forestal
DNA	Designated National Authority	Autoridad Nacional Designada
FCPF	Forest Carbon Partnership Facility	Fondo Cooperativo para el Carbono de los Bosques
FPIC	Free, Prior, and Informed Consent (or Consultation)	Consentimiento Libre Previo e Informado (o Consulta)
GIZ	German Development Agency	Agencia Alemana de Desarrollo
LGA	General Environment Act	Ley General del Ambiente
MEF	Ministry of Economy and Finance	Ministerio de Economía y Finanzas
MIDA	Ministry of Agricultural and Livestock Development	Ministerio de Desarrollo Agropecuario
NJP	National Joint Programme	Programa Nacional Conjunto
NPCC	National Program on Climate Change	Programa Nacional de Cambio Climático
PA	Protected Areas	Áreas Protegidas
PES	Payment for Environmental Services	Pagos por Servicios Ambientales

PIEA	Environmental Economic Incentive Program	Programa de Incentivos Económicos Ambientales
PRONAT	National Land Titling Program	Programa Nacional de Administración de Tierras
R-PP	Readiness Preparation Proposal	Propuesta de Preparación para REDD+
RRNP	Private Nature Reserve Network	Red de Reservas Naturales Privadas
SINAP	National System of Protected Areas	Sistema Nacional de Áreas Protegidas
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples	Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas
UNFCCC	UN Framework Convention on Climate Change	Convención Marco de las Naciones Unidas para el Cambio Climático
WWF	World Wildlife Fund	Fondo Mundial para la Naturaleza

1.0 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. However, many countries still face difficulties to address resource tenure in a comprehensive manner and many face challenges that include:

- Identify the range of ways that tenure security impact the success of climate change mitigation and adaptation activities;
- Assess the legal and social frameworks that underlie tenure security; and
- Identify and implement 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. 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 to 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 Panama and does not reflect a position of the US Government on FPIC.

The analysis was undertaken for the USAID Central America Regional Climate Change Program (RCCP), and complementary analyses were undertaken in Honduras and Guatemala. 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.

1.1 OVERVIEW ON PROGRAM IMPLEMENTATION IN PREPARATION FOR REDD+ IN PANAMA

Panama has assumed an active role in developing public policy and national projects on climate change, particularly after ratifying the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto

[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

Protocol. During the 1990s and early 2000s, the momentum also led to adopting policies and regulations to advance climate change adaptation and mitigation, as well as environmental protection.

The idea of developing a system of payments for environmental services and other instruments pertaining to forestry conservation were discussed early on, leading Panama to consider multiple instruments to protect the country's forests. Water resources play a key role both in operating the Panama Canal, as well as in maintaining forests and other resources and therefore Panama has structured its land use and natural resources planning strategies around watershed management.

Panama currently lacks a national REDD+ mechanism, but is laying the groundwork; the National Environmental Authority (*Autoridad Nacional del Ambiente*- ANAM) has led these efforts with financing from the UN-REDD Program. Documents to obtain additional financing from the World Bank through its Forest Carbon Partnership Fund (FCPF) were also submitted and are currently being adjusted by the national government. Despite an early start, particularly with UN-REDD, implementation in recent years has stalled, in part due to misunderstandings and difficulties related to coordination and participation activities, particularly concerning indigenous peoples. Due to these misunderstandings, in 2013, the Panama National Coordinating Agency for Indigenous Peoples (*Coordinadora Nacional de Pueblos Indígenas de Panamá* – COONAPIP in Spanish) announced that it was withdrawing from participating in the Program. In response, the UN-REDD program or National Joint Program (NJP) decided to put most activities on hold and carry out an independent evaluation of the program, following which government and indigenous peoples cautiously resumed their dialogue. In April 2014, the national government, through ANAM, and indigenous peoples signed an agreement on a joint agenda to work on environmental issues over the next five years and decided to resume the NJP activities.

Multiple factors will influence the resumption of REDD+ readiness activities, but the process developed will provide valuable lessons learned for other countries going through similar situations during their REDD+ readiness processes.

1.1.1 Preparing for REDD+ Implementation

Led by ANAM, Panama began to implement REDD+ readiness activities within the framework of the UN-REDD program in 2009. Panama was also invited by the FCPF in June 2008 to submit a draft REDD+ Readiness Preparation Proposal (R-PP), which the government submitted in May 2009. The FCPF, UN-REDD and ANAM agreed to harmonize their work in Panama, among other things by managing the national preparation effort through a single administrative and coordination entity, ANAM. However, as of March 2014, the arrangements to transfer funds from the FCPF have not been completed and the Government of Panama is currently working on responding to comments on the R-PP.

In light of these unfolding events, the UN-REDD Regulatory Board approved an extension of the NJP through June 2015.

Adjusting REDD+ Activities in Panama Based on Needs, Resource Availability and International Decisions

The mid-term evaluation described reported **progress in developing technical products in the implementation of the UN-REDD Program** (including an assessment of the legal framework, a national forestry inventory, an analysis on causes of deforestation, among others), compared to **significant lags in implementing the consultation, participation, training and communication components**. For example, ANAM and UNEP have worked on a payment and benefits distribution system (identifying direct and indirect causes of deforestation, key trends, policies to reduce deforestation, multiple benefits from forests and opportunity costs) that have showed the potential of REDD+ to change behaviors. This work required the development of new methodologies and has garnered international interest (UN-REDD, 2013e).

The UN-REDD Program in Panama

- The UN-REDD National Joint Program (heretofore, NJP) was approved in **October 2009 with a** budget of US$5.3 million for an initial three-year period (January 2011 - January 2014).
- **ANAM established a REDD+ working group** and hired a program coordinator in 2011 to work with the ANAM REDD+ group coordinator.
- A **multi-disciplinary team was created and delivered several technical products** (e.g. REDD cost/benefit scenarios and legal framework analyses).
- **The National REDD Task Force was established in 2012** for coordination and participation.

Brief Summary of Recent Events

- COONAPIP was originally assigned to coordinate activities for the participation of indigenous peoples.
- Legal issues made it difficult to transfer funds to COONAPIP. Furthermore, COONAPIP, since the adoption of the NJP had requested that a number of issues be taken into consideration (including broader environmental governance aspects beyond REDD+, such as ratification of ILO Convention 169) and later on presented a broad work plan to be covered by the Program.
- Discussion and disagreements emerged over the amount and scope of activities within the NJP mainly relating to participation and consultation of indigenous peoples.
- In February 2013, COONAPIP sent a communication denouncing that indigenous peoples' rights were being violated and announcing that the organization was withdrawing from the NJP.
- In mid-2013, an independent team carried out a mid-term evaluation and the NJP decided to suspend activities. The evaluation report found inconsistencies and produced recommendations for the NJP regarding the participation of indigenous peoples and COONAPIP, but **it did not confirm the violation of indigenous peoples' rights.**
- ANAM and COONAPIP then carried out a series of consultations where they proposed a broader **environmental agenda of work with indigenous peoples including modifications to the NJP results framework**.
- Toward the end of March 2014, **ANAM and indigenous authorities signed an agreement for a five-year environmental agenda** that includes the creation and application of mechanisms for communication, coordination and follow-up to ensure implementation, monitoring and evaluation of the NJP.

Contributing factors to the delays in implementing the NJP (according to the mid-term evaluation) have included:

- **Underestimating the complexity** of legal, political, social and technical issues relating to REDD+;
- **Institutional changes;**
- **Uncertainty** regarding the international definition of REDD+, and
- A lack of **strategies for consultation, participation and communication.**

Following the evaluation, the NJP **restructured its work plan** and priorities, with government and stakeholder support. The new approach, which is described in Chapter 2, intends to be more **realistic** and flexible to adjust to the national context. Nonetheless, the restarting of activities to prepare for REDD+ are contingent upon a number of issues, including another change in government and a transition period following the presidential elections in May 2014.

1.2 PILOT PROJECTS AND AREAS SPECIFIC TO REDD+

1.1.2 Pilot Projects

Panama has been working on incentive programs and projects to protect forest resources, reflecting an early start for REDD+ implementation activities. While there are no REDD+ strategy pilot projects, initiatives have sought to prepare pilot projects at the sub-national level.

One notable example of these initiatives is the **Panama Canal and Pilot Watershed Activities.** In June 2012, ANAM, the Panama Canal Authority (ACP) and the German Development Agency (GIZ) signed an agreement through the Central American Commission on Environment and Development (CCAD) to establish a REDD+ pilot project in the Panama Canal Zone. The specific legal and institutional characteristics of the ACP make this a good opportunity to develop experience and to later extract lessons for the national context.

When Canal operations were transferred to Panamanian government authorities in 1999, the ACP assumed responsibility for conserving water and land resources in the Canal watershed. Despite having developed a watershed land use plan, changes in land uses might eventually jeopardize the availability of water resources and increase sedimentation within the canal. To address this situation, since 2006 the ACP has implemented an Environmental Economic Incentive Program (PIEA in Spanish) designed to promote biodiversity and forestry restoration and protection. Building on this experience, the pilot project will aim to restore about 10,000 hectares of degraded land.

As part of that Program, the ACP will sign legally binding agreements with each of the landowners (see Chapter 4 of this report) under which the ACP will undertake forestry activities on the land and land owners will transfer the rights pertaining to the environmental service of carbon sequestering to the ACP. The work related to monitoring and reviewing the benefit distribution design is underway and it is expected that carbon credits will be issued in the near future (REDD CCAD GIZ, September 19, 2013)[2].

Other types of initiatives are being undertaken by non-governmental organizations (NGOs) and entities that support forestry conservation or sustainable forest management, primarily in the Darien region. In some cases, the activities are being undertaken by private entities seeking to trade sequestered carbon in the voluntary market.[3] Other initiatives include those undertaken by the World Wildlife Fund for Nature (WWF) to promote sustainable forest management in Embera Wounan communities based on small community enterprises that have certified their sustainable forest management practices in order to sell timber[4].

1.1.3 REDD+ Priority Areas

The **NJP document does not clearly define the priority areas for REDD**+. The current NJP review process, however, will provide each stakeholder´s perspective on priority territories to improve forestry governance. Partial and preliminary results (provided by representatives from different institutions) indicated that key areas are not only those that contain the **remaining forest cover (e.g. Darien, watersheds on the Costa Rican border, the Canal watershed, the Caribbean corridor and the western watersheds),** but also those areas that have already been subject to intense deforestation, such as the **Comarca Gnäbe-Buglé region,** along with other regions lacking forest cover, but that were/are areas of rural migration toward other forested regions in the country, such as the **Azuero peninsula**.

[2] Source: ACP. http://www.climateprojects.info/PA-ACP/

[3] Examples include the activities undertaken by Futuro Forestal to reforest degraded areas. See: http://www.futuroforestal.com/services/projects/panama, accedido el 14 de abril de 2014

[4] For additional information, please refer to: http://www.wwfca.org/nuestro_trabajo/bosques/manejo_forestal/forestal_panama/manejo_forestal_comarca/

Concentration of Forests in Panama

- Forestry coverage in Panama is found primarily on lands in the indigenous territories (***Comarcas Indígenas***), as well as on lands within the **National System of Protected Areas** (***Sistema Nacional de Áreas Protegidas*** -SINAP) (ANAM, 2009). Nevertheless, the country **lacks any official map detailing indigenous territories** making it hard to estimate the percentage of forests within the indigenous territories and the areas in which indigenous lands overlap with protected areas.

- ANAM has estimated that the extent of forest cover in **indigenous territories legally established as of 2000** is **27%** (ANAM, 2003), but unofficial sources estimate that "**54% of mature forests in Panama** are located in indigenous territories" (PRISMA, 2013).

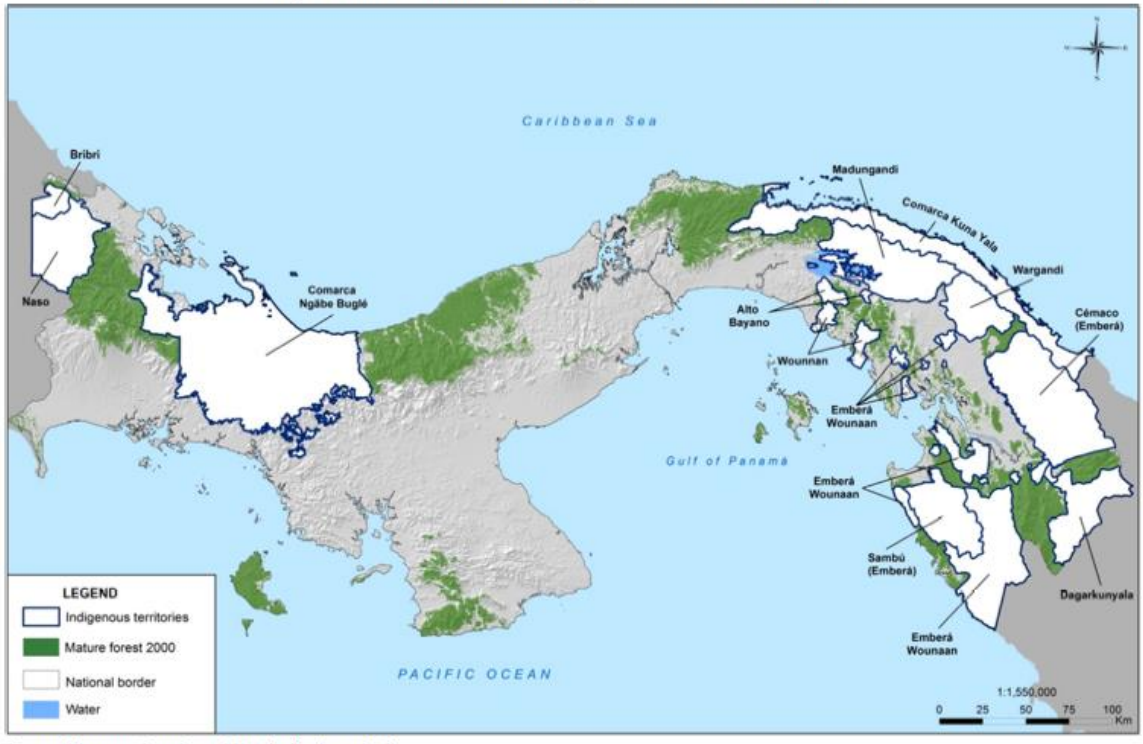
- Mature forests are primarily located in Darien (7,775 Km^2), Panama (4,115 km^2), the Embera Indigenous Territory (3,953 km^2), Bocas del Toro (3,158 km^2), the Ngöbe-Buglé Indigenous Territory (2,745 km^2), Veraguas (2,460 Km^2), Colón (2,269 km^2) and the Kuna Yala Indigenous Territory (2,095 km^2) (PRONAT, 2008).

- Despite a lack of consistency in the data, it is apparent that the areas within **indigenous territories account for a significant percentage of the country's forest coverage** (see map in Annex I on 2012 national forest coverage).

- Based on official data, the highest rates of deforestation are found within the regions of Ngöbe-Buglé Comarca (-21.77%), Darién (-13.89%) and Panamá (-12.21%).

The following map from unofficial sources illustrates the location of forests within indigenous areas, while also including not only indigenous territories that have been legally established, but also those that have been claimed by indigenous peoples and are pending resolution.

Map 2: Forests outside of indigenous territories of Panama



Source: Vergara-Asenjo and Potvin (forthcoming).

1.3 POLICIES RELEVANT TO REDD+

Panama lacks specific policies or legislation to implement REDD+, but does have policies and regulations that are relevant to REDD+ implementation.

Given that the Constitution mandates the **rational use of natural resources, as well as that of soil and non-renewable resources**, the national environmental policy provides a framework upon which to build a REDD+ mechanism. The country has developed climate change adaptation and mitigation policies, as well as environmental policies on natural resources under the responsibility of the ANAM.

The forestry policy, together with the land use policy, provides the framework for the use and harvesting of forest resources. Land use is also regulated through land use planning to make the best use of land in light of its environmental, social and cultural suitability; load capacity, and development requirements. Given that only 25% of the national territory is suitable for agriculture and livestock and that 75% of the land is primarily suited for forestry, most of the land mass **should ideally be set aside for agro-forestry and forestry activities** (ANAM, 2008). Nevertheless, estimates from 2008, suggest that 33.1% of the national territory was dedicated to **farming and livestock activities**.

The country has undertaken a number of efforts to promote land use planning. In 2004 only 16.9% of the country had land-use plans in place, and this increased to 23.7% by 2008. **Watersheds and sub basins** have been central to this effort; the most significant of which has been the Land Use Plan for the Panama Canal Watershed (Mariscal, 2012). REDD+ could provide an excellent opportunity to revisit the concept of environmental land use planning, primarily in regard to land use around watersheds, i.e. putting watersheds at the core of forest management.

Forestry regulations include provisions to protect forests, as well as to factor in the possibility of **managing natural forests to capture and fix carbon dioxide**. In addition, there are diverse examples of regulations within indigenous territories relating to natural resources.

The above-mentioned policies have the potential to provide synergies and complement REDD+ implementation, while REDD+ could in turn contribute to improving their implementation and results.

POLICIES RELEVANT TO IMPLEMENTING REDD+

Policy	Relevant Aspects
ENVIRONMENTAL POLICIES	**The right to a healthy environment:** The Constitution includes a chapter on an "ecological regime" that sets out guiding principles regarding the environment: - the "State has a fundamental duty to ensure that inhabitants reside within a **healthy environment** free of contamination (Article 18); and - the "State and every inhabitant has a duty" to "provide for **social and economic development** in such a way as to avoid contaminating the environment, **maintain an ecological balance, and avoid the destruction of ecosystems**." (Article 119) **The State has the authority to regulate the use of natural resources to ensure rational utilization:** - legislation will regulate the utilization **of non-renewable resources** so as to avoid negative social, economic or environmental **repercussions** (Article 121); and - the State has the authority to regulate, oversee and apply "any necessary measures to ensure the rational utilization and harvesting of fauna on land, rivers or oceans, as well as in the case of forests, land and water, to avoid their degradation and **ensure their preservation, renovation and permanence**." (Article 120)

	The General Environmental Act (*Ley General del Ambiente* – LGA N°41 from 1998) forms the basis of national environmental policies: - stipulates that natural resources belong in **the public domain** and are **of social interest** (Article 64); and - includes the **concepts of sustainability and rational use of natural resources** (Article 62).
POLICIES ON CLIMATE CHANGE	- The **National Program on Climate Change (PNCC** in Spanish) was created in 2001 to support implementation of UNFCCC activities and those related to the Kyoto Protocol. - The **National Policy on Climate Change** was approved in 2007. - The **National Committee on Climate Change** (***Comité Nacional de Cambio Climático* - CONACCP)** is comprised of representatives from government, academia and associations[5] to assist ANAM on the National Policy on Climate Change.
FORESTRY POLICIES	The **National Forestry Policy** was adopted in 2009 and is based on the following principles: - **value:** acknowledges that forestry resources are economic assets; - **sustainable management:** promotes sustainable development of forestry activities using economic, legal, social and environmental instruments; - **multi-purpose**: considers the functions of forestry resources, including the supply of environmental goods and services, and - **ecological compensation:** includes a mandatory requirement within concessions and licenses for ecological compensation and financial value. The Forestry Law (1 of 1994) was drafted to protect, conserve, improve, increase, educate, investigate, manage and **rationally use forest resources**. It includes a design for permits and sanctions applying to the use of forest resources. **Resolution JD 05-98** (regulating the Forestry Law) stipulates that ANAM may "set up mechanisms to promote and encourage the **establishment of plantations and management of natural forests in order to capture and fix carbon dioxide (CO_2) and make a positive contribution to the national and international balance of greenhouse gas emissions**. To that end, an office will be established to promote, follow up and control the efforts (Article 15). Panama also has a **National Forestry Development Plan from 2008 that provides a framework for national forest management.**
SOIL AND LAND USE POLICIES	The State will promote the **optimal use** of soil, strive to see that it is distributed rationally and **used and conserved appropriately** to ensure that it remains in productive condition (Article 122 of the Constitution). The **correct use of the soil is the responsibility of the owner** of the land and must be conducted in **accordance with its ecological classification** so as to avoid underuse and a possible reduction in productive potential (Article 125 of the Constitution). Soil use must be **compatible with the environmental aptitude and optimal use** as stipulated in the environmental land use plans and zoning requirements (Article 75 of the General Law on the Environment). **Provincial and Indigenous Territorial Plans for Land Use and Zoning** should be prepared (Executive Decree 283 of 2006, Articles 46 and 47). Compliance with Territorial Environmental Land Use Plans is **mandatory** (Article 75).
NATIONAL POLICY ON	**LAW 44 of 2002 and Executive Decree 479 of 2013:** create a management and protection system for water basins. ANAM will conduct a diagnostic and develop regulations for a **plan to manage, develop, protect and conserve each basin**. The

[5] Representatives from: ANAM, MEF, MIDA, MINSA, MEDUC, MICI, MOP, MIDES, ARAP, IDIAP, SENACYT, SINAPROC, University of Panama, Technological University of Panama, ACP, the Secretariat for Energy and the Electrical Transmission Company.

WATER RESOURCES	plans will be the basis for activities and will also include the creation of water basin committees to coordinate and promote cooperation. **NATIONAL POLICY ON WATER RESOURCES** (Executive Decree 480 of 2013) and **NATIONAL PLAN ON INTEGRATED WATER RESOURCE MANAGEMENT 2010-2013:** adopt principles that are applicable to water resources and include the concepts of equality, environmental sustainability, participation, prevention, sanctions on polluters and the value of water as an economic asset.
OTHERS	National Policy for Decentralized Environmental Management, National Policy on Environmental Oversight and the National Policy on Biodiversity.
INDIGENOUS AND TERRITORIAL LAW	The legal framework in Panama includes a number of regulations pertaining to indigenous communities, not only for specific sectors, but also with provisions that establish and regulate indigenous territories[6].

1.3.1 Regulatory Initiatives relevant to REDD+ Implementation

Two initiatives have arisen in recent years to modify the forestry legislation. These may have repercussions in regard to how the forestry sector is structured and in relation to REDD+.

On the one hand, draft legislation submitted in 2011 "to establish new forestry legislation and other provisions" included institutional reforms and transfers responsibility for the forestry sector from ANAM to the Ministry of Agricultural and Livestock Development (*Ministerio de Desarrollo Agropecuario* -MIDA). The proposal strongly emphasizes the promotion of forestry activities in the private sector. The proposed legislation has stalled following strong opposition by environmental groups and non-governmental organizations.

On the other hand, draft legislation on a forestry law was submitted in 2012 as a result of consultations among civil society and the public and private sectors. This bill proposed significant reforms to the forestry legal framework with specific considerations for indigenous territories, forestry incentives and addressed some of the issues in the current legal framework that encouraged deforestation. The bill includes aspects that are relevant to REDD+, but remains in discussion in parliament; at the time of writing its future is uncertain.

1.3.2 Environmental Institutions

The relevant authorities are summarized below.

Institution	Authority
Autoridad Nacional del Ambiente (ANAM)	Authority to apply **environmental policies and those pertaining to natural resources**. Responsible for managing the National System of Protected Areas (SINAP in Spanish), as well as for managing forests, including the issuance of permits for use, while monitoring and applying sanctions. The functions regarding protection of forest resources are carried out by its Department for Forestry Development and Management (***Departamento de Desarrollo y Manejo Forestal* –DEMAFOR in Spanish) under the Directorate for Integrated Water Basin Management (*Dirección de Gestión Integrada de Cuencas Hidrográficas*).** At the regional level, the Department has inspectors and field offices to apply environmental regulations. Given that the department is not a cabinet-level ministry, it is represented within the Executive Branch by the Ministry of Economy and Finance (MEF).

[6] For additional information on territorial regulations and environmental aspects,see: E. Recio (2011), Annex II, Comparative Chart on Territorial Regulations.

Autoridad de los Recursos Acuáticos de Panamá (ARAP)	Governs, monitors and controls the use, management and conservation of **marine and coastal resources**, except for those found within protected areas under ANAM jurisdiction. The agency authorizes water rights concessions, establishes special zones for coastal-marine management and monitors water quality for fishing and aquatic activities.
Ministerio de Desarrollo Agropecuario (MIDA)	Has duties pertaining to **agricultural and livestock activities**, including training, credit and financing policies, recognizing rights of agricultural possession and promoting general agricultural policies. To date, the Ministry has not assumed a significant role in climate change or REDD+ activities. It does, however, play an important role regarding small-scale farmers or producers.
Autoridad Nac. de Administración de Tierras (ANATI)	Authority pertaining to land tenure and title – a key aspect for REDD+ implementation in Panama.
Ministerio de Economía y Finanzas (MEF)	Responsible for developing initiatives on economic policy; planning public investment and strategies; developing, implementing and overseeing the national budget and also representing ANAM within the Executive Branch.
Others	In regard to local governments, it is worth mentioning that city councils have responsibilities to develop, conserve and improve municipal parks while defending and promoting forest assets. Similarly, in indigenous territorial areas and collective lands, the respective traditional authorities play a significant role in regulating natural resources and environmental protection.

2.0 STAKEHOLDERS, POSSIBLE IMPACTS, AND BENEFITS FROM REDD+

The fundamental issue regarding stakeholders is how they may be affected by REDD+ implementation. There is broad consensus that indigenous peoples, rural inhabitants (campesinos) and afro-descendants may be the most affected by REDD+, since they live in the forest, depend on it, and "they are the most vulnerable, impoverished and greatest victims of increased inequality" (Jiménez Pérez, 2014). To date they have participated in REDD+ preparedness to varying degrees.

Some other stakeholders have yet to become more active in the REDD+ process including some ministries, local authorities and representatives from the hydroelectric and mining sectors. Another concern is ensuring that upcoming participatory processes integrate the most vulnerable stakeholders like indigenous women and youth.

In reviewing the legal situation of forestry resources and of land tenure vis-á-vis key stakeholders, the conclusion is that there is significant need to provide clarity on the rights pertaining to forestry resources and access to carbon benefits as well as on the rights to land tenure. Thus, it is necessary to ensure legal certainty for the array of stakeholders involved in a potential REDD+ mechanism.

The following table summarizes the three key forest stakeholders and the possible way they could be affected by REDD+ implementation. Throughout the section more details on these and other actors are provided.

This abstract review of stakeholders should be developed in more detail, including a thorough review of land tenure and resource issues once the priority REDD+ areas for Panama are identified.

Key Actors	Tenure	Tenure of Forestry Resources	Benefits and Potential Effects of REDD+
Indigenous Communities	- Indigenous territories (*Comarcas).* - Collective lands, including areas that lack land title (some are pending approval following claims filed to request title). - Areas of overlap between territories/collective lands and private property/protected areas.	Several interpretations follow: 1) Because they are considered **natural resources, all forests belong to the State** (Environment Law-LGA, Article 64). 2) **Another interpretation** (based on Forest Law-*Ley Forestal*) is that: **natural forests are state** assets; **artificial forests belong to the individual or community that register them at ANAM and own the land.** 3) A holistic interpretation of constitutional provisions states that: natural and forestry **resources within indigenous**	If REDD+ is applied appropriately and compensates indigenous peoples for stewarding the forests, it may support forest-dependent livelihoods. If the requisite legal certainty is lacking, it could affect practices that indigenous peoples depend upon, undermine rights or even burden the peoples with responsibilities that are difficult for them to assume. From a legal perspective, it is necessary to clarify the nature of the mechanism and provide assurances that the livelihoods of indigenous peoples will not be adversely affected. Clear establishment of boundaries for the indigenous territories would

		territories (Comarcas) are the collective property of the community.[7]	be conducive to greater legal certainty in applying REDD+.
Rural Inhabitants	Diverse. Possession, property, rental agreements, among others.	The above interpretations (1& 2) also apply to forest resources.	In REDD+, these stakeholders should be involved as partners. They may be affected by limitations on certain subsistence activities and could find it difficult to comply if they are not appropriately factored in REDD+.
Afro-darienites	In general, they lack ownership over the lands they occupy.	In principle, their situation in regard to resource tenure is precarious.	These actors may be affected given that conservation activities may restrict their use of forests and may affect their subsistence activities. They may be displaced by other stakeholders with better rights over the areas and who want to reclaim the rights pertaining to carbon capture.
State	The State is the owner of unoccupied land (*tierra baldia*, in other words, any land that is not private property belonging to individual or legal persons) and of all other lands that have been acquired by the State. Protected areas, mangroves, etc. are property of the State and are inalienable.	The State authorizes the use and exploitation of natural resources by means of concessions, permits and authorizations (usually through ANAM or competent authority). The above listed interpretations also apply.	For difficulties of implementation of the array of national environmental policies, REDD+ could be an opportunity to optimize implementation of relevant policies and improve forestry governance.

2.1 KEY ACTORS AND THEIR INVOLVEMENT IN THE REDD+ PREPARATION PROCESS

The following sections are based on existing information and consultations to identify the main actors that may be affected by REDD+ and to include some of the specific characteristics in each case.

2.1.1 Indigenous Communities

There are **seven indigenous peoples** in Panama: Bribrí, Naso, Ngöbe, Buglé, Guna, Emberá and Wounaan, comprising 12**% of the total population** (National Census 2010). The situation of each people varies in terms of population, land tenure and institutional structure.

Generally speaking, the communities maintain a very **close relationship with natural resources**, as well as traditional practices to gather forest products and farm small parcels of land, among others. Population

[7] Vision introduced by indigenous lawyers, see details in the section on rights associated to natural resources and carbon ownership.

density contributes to degrading natural resources such as river courses within urban areas. Their dependence upon natural resources is made worse by **high poverty rates.** The Darien Sustainable Development Strategy points to estimates that **98.4% of the population is in poverty and 90% of those are in extreme poverty** (CONADES, 2008).

LAND TENURE: The land tenure situation among indigenous peoples varies.

1- Indigenous Territories (Comarcas Indígenas): Five indigenous territories called Comarcas were officially established for several indigenous peoples by a specific law for each case: the Kuna (three Comarcas), Ngäbe and Buglé (one Comarca) and the Emberá and Wounáan (one Comarca in two areas). The indigenous territories Comarcas are special regimes and are true political/administrative units; the land is inalienable and imprescriptible. The territories cannot be titled (to third parties). In principle, therefore, third party rights of possession after the territories were created will not be recognized. The lack of demarcation of clear boundaries, however, has encouraged other local inhabitants that seek lands with forest resources, leading to a range of conflicts associated with the squatting and occupation of lands along the borders of the indigenous territories. (The annex to this report includes additional information).

2- Collective Lands: In addition, there are indigenous communities that have filed claims on the land they inhabit based on the Framework Law on Collective Lands, Law 72 of 2008. According to this Law, the ownership of these lands, once recognized, is considered "imprescriptible, non-transferable, non-seizable and inalienable." (Article 9). Some of these lands have been acknowledged by the competent authority and benefit from legal protection[8], but there are a number of claims pending approval. The situation leads to greater uncertainty regarding tenure and the rights of the inhabitants over their land and natural resources[9].

As described above, there are also areas of overlap between indigenous territories, properties claimed under the Framework Law on Collective Territories, and protected areas –all of which contributes to greater complexity in managing natural resources.

NATURAL AND FORESTRY RESOURCES: A number of interpretations apply:

1) **All forests are natural resources** and therefore **belong to the State** (Environmental Law, Article 64).

2) **Another interpretation** (based on *Forest Law*) provides that:

- **Natural forests** are property **of the State,** regardless of the category of land tenure.

- The law does not specify the property of **artificial forests,** but this interpretation considers that since artificial forests are developed by an individual or by a community, the law gives them greater potential to benefit from them. They would therefore belong **to the individual or the community that registers them with ANAM and holds title to the land**.

However, the Forest Law does not provide such a mention, it does not recognize whether artificial forests belong to the individual that has planted it, which renders it ambiguous.

3) An interpretation of the Constitution leads to the conclusion that based on Articles 123 and 127 forestry resources in indigenous territories are considered collective property of the territory for the wellbeing of the indigenous peoples (more details included in following Chapters).

CONFLICTS REGARDING LAND TENURE AND THE USE OF RESOURCES: There are a variety of conflicts with other actors in regard to land tenure and the use of resources, for example with

[8] On June 4, 2012, the National Authority on Land Administration (*Autoridad Nacional de Administración de Tierras* -ANATI) issued the first two titles for collective land ownership to the communities of Caña Blanca and Puerto Lara, benefitting more than 900 individuals from the Embera and Wounaan indigenous peoples in that region. Web portal on Indigenous Public Policy, source: http://www.politicasindigenas.gob.pa/Seguridad-Territorial.html

[9] Conflict situations in regard to land claims continue to exist in Panama. For example, refer to La Prensa, November 25, 2013: http://www.prensa.com/uhora/locales/anati-tierras-colectivas-embera-cierre/232508, accessed on January 25, 2014.

settlers ("*colonos*") and other campesinos rearing cattle or carrying out extensive agriculture[10]. Furthermore, the development of large-scale infrastructure projects without consultation continues to raise concerns and produce conflict. These conflicts are taking place on indigenous territories, on collective lands and in areas that lack title, where the legal uncertainty affecting indigenous peoples is even greater.

RIGHTS ASSOCIATED TO CARBON: Current legislation lacks an explicit definition on property rights regarding carbon (see the detailed analysis in the section on carbon rights). That said, there is a statement regarding benefits from activities designed to use natural resources belonging to indigenous territories or indigenous peoples: "these…will have the right to participate in the economic benefits that may be produced thereof" (Environmental Law, Article 105).

INCLUSION IN REDD+ACTIVITIES: The COONAPIP has been an active participant in developing REDD+ in Panama. It was initially responsible for coordinating the participation of indigenous peoples and was also the organization to submit the letter stating their withdrawal from REDD+ activities.

IMPACT: REDD+ could have an impact on the traditional way of life of the communities that rely to greater extent on forest resources. The same groups may find their claims to land affected, especially in areas in which land titles have not been recognized.

-Applying REDD+ within **indigenous territories** may have implications beyond restricting the use and management of forests, in that it could also have significant repercussions regarding liability in the case of third parties harvesting the forest or in the case of forest fires. The way that management responsibilities will be managed within each community also warrants attention.

COONAPIP´s Role as Spokesperson for Indigenous Peoples in REDD+

COONAPIP was created in 1991 as a platform to fight for territorial recognition and defend the social and cultural rights of indigenous peoples in Panama. It was restructured in 2008 and indigenous peoples in COONAPIP are now represented by their territorial authorities that include indigenous chieftains (*caciques*) and monarchs *(reyes).*

COONAPIP was involved in designing the NJP, establishing 19 issues as "principles for UN-REDD program implementation in Panama." COONAPIP was acknowledged by the NJP as the legitimate representative of indigenous peoples in Panama and the indigenous authorities from all 11 territories agreed that "COONAPIP will be the National Indigenous Task Force on Communication and Coordination of Activities within Indigenous Areas."

COONAPIP has been a key actor in liaising and coordinating among the array of indigenous peoples although it has not been exempt from the difficulties and controversies within them. There have been a number of disputes among indigenous peoples regarding their representation and the way in which authorities are elected. Given that traditional authorities bear ultimate responsibility for signing agreements and compliance, the respective chiefs and traditional authorities are the ones that represent each indigenous people.

- Applying REDD+ on **collective lands** that have yet to be officially recognized could also pose a risk to communities' access to their territory and resources. It is therefore important to ensure that the territories are appropriately acknowledged prior to implementing a REDD+ mechanism.

2.1.3 Rural Inhabitants (*Campesinos*)

The situation concerning rural inhabitants throughout Panama varies and makes it difficult to generalize. Over the course of the last century, **migration has been significant** from the more arid provinces of Veraguas, Herrera and Los Santos to areas in Darien made up primarily of tropical forests.

These circumstances over the last century in Darien have involved waves of rural inhabitants or settlers moving onto public or private property. They **settled without land titles** and often found themselves

[10]To illustrate, see the letter submitted by indigenous representatives to the Supreme Court of Justice alleging property invasions, dated February 1, 2012 and available at: http://www.forestpeoples.org/sites/fpp/files/news/2012/02/dununcia_formal_indigenous_peoples_pananma_feb_2012.pdf, accessed on January 25, 2014.

Cultural Land Uses and Dynamics of Deforestation

Although each group of settlers or rural inhabitants has their own "cultural land use," (as identified, for example, in Darien by Perafán Heli Nessim, 2001), the main activities they conduct include planting crops (primarily using slash and burn techniques) and raising livestock. Occasionally, once inhabitants have settled in and totally "cleared" the land, the parcel is sold to others with greater resources to use for large-scale cattle ranching.

Nevertheless, the behavior of rural inhabitants varies along each front of deforestation. Drivers of deforestation in the Darien and Bocas del Toro regions include livestock grazing and crops but different regions have other significant drivers, for example: In Darien, reforestation with monocultures (mainly Teak); in Bocas del Toro, infrastructure projects (primarily hydroelectric facilities); and in Colon, Cocle and Veraguas, mining activities or the transition from livestock grazing to low-altitude coffee plantations (Mariscal, 2012).

These types of land uses may also contribute to conflicts with other stakeholders, particularly with indigenous peoples -to the extent that in the case of Darien, for example, the advance in occupation of lands for agricultural use has been described as **"aggressive, indiscriminate and invasive"** (CONADES, 2008). It is characterized as **aggressive** because it totally eliminates native plant cover, uses slash and burn techniques or chemicals to eliminate weeds, takes no measures to mitigate soil degradation, encompassing even mangroves and coastal lands that affect fisheries. It is **indiscriminate** because it makes no distinction between various types of soils even those that are not well suited for the chosen activity. It is **invasive** because it takes place in indigenous territories or afrodarienite lands forcing displacements and causing conflict, even creating pastures in protected areas.

The Panama Sustainable Development Strategy concluded that "**in the absence of any significant changes in the current production model and efforts to halt the disorderly progress of the agricultural frontier, the damages to ecosystems and biological diversity will be irreversible and will also yield problems of cultural sustainability** (due to, for example, lack of protection of indigenous and afrodarienite territories facing advancing settlements originating from the interior of the country)" (PRODAR, 2011).

involved in conflict over possession rights (Heckadon-Moreno, S., 2009). More recently, in the 1970s and 1980s, road building, infrastructure projects, easier access into remote areas and increases in land price have contributed to creating a new business of **land speculation** based on an **increase in land prices where forests have been partially cleared.** Speculators settle into a new region to seize and sell the land as quickly as possible at the highest possible price. The basic premise has been that "working" the land has implied "clearing the forest." These mechanisms created a process of speculation and land sales during last century that, with some nuances, continues today. Nevertheless, this pressure is less significant now, particularly in comparison with the impact and potential impacts of major infrastructure, highway and tourism projects.

Some of the individuals interviewed to assess the UN-REDD program underscored the fact that **rural inhabitants are not the "perpetrators," but rather are victims of the system**.

As described above, however, there is significant variation in the economic situation of rural inhabitants. Although some areas of the country have seen an increase in the number of small producers or farmers, there are other areas **where poverty levels among rural populations are very high and their activities are primarily geared toward subsistence.** To illustrate, in districts of the Darien, such as Chepigana and Pinogana, poverty rates are at 79% and 74%, respectively and extreme poverty rates are 49% and 43%, respectively (CONADES, 2008). Therefore, an assessment of the situation facing rural inhabitants, requires a clear distinction **between those that are small-scale farmers** and those that are **large-scale landowners** and even extensive cattle ranchers.

LAND TENURE: The situation regarding land tenure varies as well, according to the specific circumstances. Tenure may be in the form of private **property,** including full property rights such as alienation, use and usufruct; tenure can also be based **on rights of possession** –a widespread practice due to the way that the agricultural frontier has expanded. Tenure can also be based upon **rental agreements or on specific rights such as usufruct** or can be **collective property** in cases of rural settlements that have been recognized as such. There is a tendency for large landowners to have more secure tenure rights while it is more common for small-scale farmers to lack property title. Land title programs have continued to make

progress in rural areas as part of a national effort to stabilize land tenure, but a large percentage of land is still pending title, primarily in forested areas.

NATURAL AND FORESTRY RESOURCES: The interpretations from the previous case also apply here.

RIGHTS ASSOCIATED TO CARBON: There is no explicit definition in current legislation regarding carbon property rights.

INCLUSION IN REDD+ ACTIVITIES, INTERESTS AND BENEFITS: The NJP acknowledges that the activities and policies related to the REDD strategy must promote land tenure security for indigenous and rural communities residing within the ecosystems that are relevant to conservation for environmental services.

REDD+ implementation might be affected by these rural actors whose economic interests, in principle, could be directed to deforest. They lack secure tenure, often rely on small-scale subsistence activities that require logging, and lack incentives for conservation. If REDD+ implementation is attempted without adequately including these actors, their livelihoods will be affected, the sustainability of the mechanism will be put at risk and the potential for conflicts regarding illegal logging will increase.

On the other hand, an appropriate REDD+ implementation could benefit these populations, by including them as key partners in efforts to protect forests.

Similarly, it is essential to continue with land title programs to encourage more sustainable practices, including more intensive, rather than extensive, farming and livestock activities.

In the case of large landowners, the situation differs in that they most often purchase numerous plots from small farmers. In these cases, REDD+ implementation could benefit them in providing water resources and other environmental services currently at risk, although it could also present restrictions on their expansionist economic activities or require them to pay for environmental services (for example, in the high areas of the river basin from which they benefit).

2.1.3 Afro-descendent Communities in Darien

The Afro-descendent communities in Darien are additional key actors to be taken into consideration. These inhabitants originated in the Colombian Choco and by 1970, they were the majority group in Darien (70%) (Perafán Heli Nessim, 2001). These 19 communities now only represent 25% of the population in Darien (Perafán Heli Nessim, 2001). The communities are found in the buffer zone in the Darien National Park where they cultivate using a crop rotation system. The only groups with an increasing population are those who work on shrimp fishing. Although the characteristic use of Afro-descendent land does not contrast strongly with that of the indigenous peoples, there are still a number of conflicts relating to their occupation of parts of indigenous territories.

The Coordinating Agency for Afro-descendent Communities in Darien lacks legal authority.

LAND TENURE, NATURAL AND FORESTRY RESOURCES: Afro-descendent communities lack legal ownership of their collective lands and some of the lands they occupy fall within indigenous territories. The precarious land tenure of these communities means that their situation in relation to natural and forest resources and carbon rights is equally uncertain and precarious.

INCLUSION IN REDD+ ACTIVITIES, INTERESTS AND BENEFITS: The Coordinating Agency for Afro-descendent Communities in Darien participated in the NJP as of the first meeting of the REDD+ National Task Force in September 2012 and has continued to participate actively.

In the case of these forest-dependent communities, REDD+ could imply a number of restrictions on the use of forestry resources. It could also lead to greater uncertainty regarding the lands they occupy in light of the

interests of other actors in receiving benefits for maintaining forest cover. They may benefit, however, if they were taken into consideration regarding forest conservation, reforestation controls and development of alternative economic activities. It is also important to provide these communities with title over the land they inhabit or to give them another form of secure tenure. Their engagement in forest management is a strategic option to ensure access to any benefits.

2.1.4 Other Sectors

A- NON-GOVERNMENTAL ORGANIZATIONS (NGOs):

The group of national and international institutions includes several environmental protection organizations and associations for the protection of indigenous rights. These have been involved in participatory activities and REDD training events. In regard to REDD+ implementation, some have provided support to develop specific products in their field of expertise. Other NGOs are involved in administering pilot projects, focused on sustainable management. This is the case of WWF, which is working on community forestry management within the Emberá-Wounaan Indigenous Territory project in Darien and has established community enterprises for that purpose[11]. Another example is Ancón NGO, which owns and manages the Punta Paitiño protected area. The benefits from actively engaging these organizations include facilitating access to specific sectors of society (like indigenous women and youth) and the valuable experience and technical expertise on REDD+ that they provide.

B- PRIVATE SECTOR, INCLUDING THE FOREST PRODUCTS INDUSTRY:

There are umbrella organizations that represent private sector interests, such as the National Reforestation Association of Panama (*Asociación Nacional de Reforestadores de Panamá* -ANARAP), established in 1985[12], the Forest Workers Trade Union, and the Association of Lumber Industries, which represents the processing sector.

These organizations have repeatedly expressed the need to revitalize the forest sector. Fuller engagement of these groups is crucial, not only in terms of training, but also as important partners to maintaining mature forests and relieving pressure on the demand for lumber by increasing plantations and reforestation. The sector has demonstrated its willingness to support activities, such as the draft legislation submitted in 2011 to revitalize the forestry sector. The principal organizations, such as ANARAP, the National Association of Livestock Farmers (ANAGAN in Spanish) and the Network of Private Reserves have participated in the consultations organized in the framework of the UN-REDD Program.

C- THE PANAMANIAN STATE:

LAND TENURE: Any land that is neither private nor collective property belongs to the State. Property rights over public lands cannot be acquired through occupation or possession; regardless of whether or not the individual has a certificate of possession. Property can only be acquired by means of a land grant agreement with the State.

Coastal lands, mangroves and protected areas are owned by the State. Land titles will not be issued over these areas, nor will any alleged claims of possession be accepted (in the case of protected areas, once they have been declared as such).

NATURAL AND FORESTRY RESOURCES: By law natural resources are "public domain and of social interest irrespective of the legally-acquired rights of individuals." Therefore, ANAM and other entities in certain circumstances, exert state authority to regulate the use of natural resources by issuing licenses and permits. Forest resources, natural forests, state-operated plantations on public land, and land optimally-suited for forests, are considered State Forest Assets and are therefore inalienable, i.e. they cannot be sold, nor

[11] Further details are available at: http://www.wwfca.org/nuestro_trabajo/bosques/manejo_forestal/forestal_panama/manejo_forestal_comarca/

[12] Members include approximately 50 organizations and individuals (http://www.anarap.com/?p=378, accessed on January 26, 2014).

altered (Law 1 from 1994, Article 13). The land on which natural forests are found is also considered as State Forest Assets, regardless of its ownership[13].

RIGHTS ASSOCIATED TO CARBON: Current legislation lacks any explicit definition of carbon rights (additional analysis is provided later in this report).

INCLUSION IN REDD+ ACTIVITIES, INTERESTS AND BENEFITS: The State's participation in designing REDD+ has been primarily through ANAM as the agency granted authority to regulate natural resources. It is quite likely that the State will assume the principal coordination role in developing REDD+ nationwide.

2.2 PARTIES NOT INCLUDED IN REDD+ DOCUMENTATION

The NJP mid-term evaluation process provided an opportunity to refresh the participation and involvement strategy for key stakeholders.

- Except for COONAPIP, there is no evidence in either the R-PP or in the NJP that **afro-descendent community, civil society organizations or their representatives participated in the consultations and review of the proposal.** Neither is there evidence of a deeper and broader analysis of the partners. There has been more participation in the current process, but a stakeholder engagement strategy is still lacking.

- The most vulnerable actors such as **women and youth** were not specifically mentioned in the documentation, nor specifically included in the process. Following a visit to Panama, the UN Special Rapporteur on Human Rights did, however, reported having received information "regarding **the fact that indigenous women often face discrimination within their communities, especially in terms of their participation in traditional structures for representation** – worrying allegations that deserve attention" (Anaya, 2014).

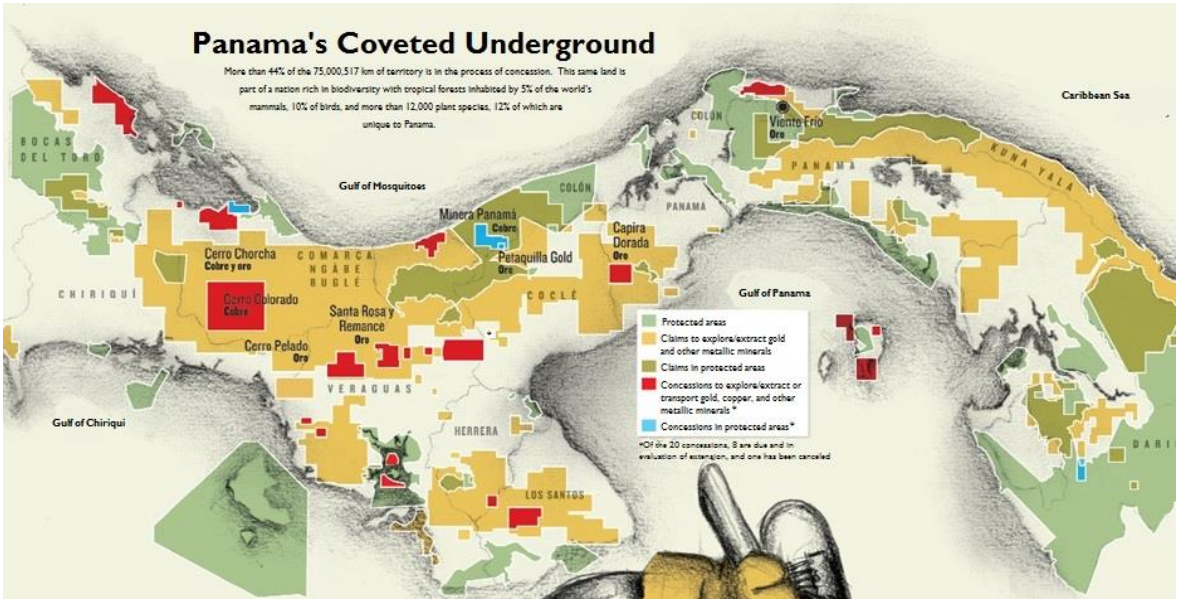
- LOCAL AUTHORITIES: The documents make no mention of participation by **local authorities**. Given the different functions and the degree of influence they exert at the local level, efforts must be made to ensure their participation and training. An example of why it is important to include local authorities is the fact that **municipal governments receive tax revenue from natural resource exploitation and other activities that have an environmental impact within the district. This means that they are "interested in authorizing any activity that might provide additional revenue"** (FAO, 2003). The Environmental Law attempted to address this issue by establishing consultative district commissions (Article 21) comprised of mayors, city council members and civil society representatives to analyze environmental concerns and provide the regional environmental administrator with recommendations. However, the level of implementation of these varies from one municipality to the other.

- **THE MINING SECTOR AND INFRASTRUCTURE:** The results from the first report on REDD+ costs in Panama show that infrastructure development projects and other projects currently being implemented could have a significant impact on forested lands. The **mining and infrastructure sectors**, primarily **hydroelectric facilities and hotel developments**, are economically relevant to the country´s future. For example, the most recent report published by the National Authority on Public Services states that a total of **40 permits have been issued to hydroelectric projects and an additional 31 applications are being processed**[14], including water basins with a high concentration of projects. Together with a large number of mining requests as of 2010 (from non-official sources) this illustrates the need to include these stakeholders specifically in REDD dialogue processes, and also to begin to build consensus around a national development plan setting out the way in which Panama wishes to develop over the next few years. The NJP is

[13] The 2008 National Forestry Development Plan states that "**Forested Areas: Forest land assets belonging to the State that may be found on private property** or in the public domain and include forest cover whose use must be considered according to Forestry Management Plans."

[14] National Authority on Public Services, National Office on Electricity, Tuesday, March 25, 2014, Available at http://www.asep.gob.pa/electric/Anexos/conce_otorgadas_tramite.pdf, accessed on April 12, 2014.

currently increasing their participation in the process. The draft new forestry regulations from 2012 described above include measures to involve the forest sector in the National Development Plan, which could be an important step in this direction. It is also essential to involve the government ministries with responsibility over these sectors in forest governance and REDD+.



Source: Burica Press, 2010. Available at: http://burica.files.wordpress.com/2010/08/mineria-en-panama.png

Based on the above, it is important to ensure that the legal framework provides certainty to forest protection projects developed as part of REDD+. This could be ensured, for example, by strengthening land use planning and zoning and by incorporating land planning considerations across different sectors.

- **URBAN INHABITANTS:** Furthermore, to help create social and economic awareness of REDD+ nationwide, efforts should be made to increase the participation of **urban residents**, who benefit from **environmental services**, but that do so without explicitly realizing the benefits of these services or paying for them.

2.3 OPPORTUNITIES PROVIDED BY REDD+

1. In broad terms, REDD+ could **create opportunities to strengthen current land titling processes** for indigenous and rural communities. It could also become a vehicle to adopt **legal measures to simplify and guarantee rights to use and manage natural and forestry resources**.

2. REDD+ could provide a means to support **forest managers,** especially **communities in precarious economic circumstances,** to generate resources from forestry conservation while also preserving traditional practices. Similarly, for campesinos, REDD+ could be a way to channel activities and limit the expansion of deforestation.

Forests in Panama have been, and continue to be the stage for conflicts and friction among an array of stakeholders and interests. Despite the fact that REDD+ could open up a number of opportunities, the challenges the country will face to implement it cannot be denied given the diversity of actors, interests and the unclear legal framework. In this context, it is no surprise that initial implementation activities to prepare for REDD+ have faced difficulties. Nevertheless, the conflicts between communities and the implementation of REDD+ have not only translated into obstacles but also as an opportunity **to redirect the UN-REDD program implementation, the dialogues between the**

government and indigenous peoples, and the setting of frameworks for participation in REDD+. It remains to be seen whether this change in direction will suffice to ensure that REDD+ implementation is able to positively contribute to national forest governance.

2.4 STRUCTURES TO INVOLVE INTERESTED PARTIES

Evolution of participation in REDD+ readiness in Panama

The NJP did not clearly define structures to ensure the participation and involvement of interested parties.

Over the course of 2012, expert communications consultants were contracted and a decision was reached to create the National REDD+ Task Force. Until then, the participation of actors from civil society had been limited to **developing specific products**, specifically, technical inputs for the REDD+ process (e.g. preparing deforestation scenarios) and alliances with some academic institutions.

National REDD+ Task Force

The National REDD+ Task Force was conceived to catalyse the participation, communication and discussion of technical inputs and the various stakeholders to develop the National REDD+ Strategy for Panama. At first, the NJP document considered it as a temporary entity that would be replaced by a National REDD+ Committee (CONAREDD in Spanish) to coordinate implementation. However, CONAREDD has not been established and the **National Task Force now is seen as the cross-cutting central piece where the National REDD+ Strategy and other relevant dialogues among stakeholders can be built**.

The Task Force met twice; once in September and once in December 2012. A total of 65 and 79 people participated, respectively, representing public institutions, the donor community, indigenous peoples, academia and civil society. A number of working groups met with varying regularity until activities were suspended in March 2013. The working groups also provided the means to train their members on various issues.

Despite being chaired by ANAM, the Task Force **lacked an official institutional structure** and this presented a weakness in terms of its capacity to insert REDD+ in national policy and to assume responsibility to coordinate all the REDD+ activities being undertaken in Panama (USAID, FCPF, GIZ).

Following the restructuring, the **National Task Force, as the forum for discussion and consensus building on REDD+, has acquired greater importance and a stronger institutional structure.**

Upon completing the NJP mid-term evaluation, the opportunity arose to conduct a self-assessment and **institute a systemic and conceptual shift in the program**. Once dialogue resumed between the government and COONAPIP, the NJP launched a consultation process **on how to conduct future consultations** on core issues or problems.

In follow up to the proposals under relevant UN-REDD guidelines, authorities restructured a **Public Participation Plan (PPP)** within the NJP framework as follows:

- The objective is to: **produce an advanced draft of the Panama REDD+ Strategy** in 2014 so as to proceed in 2015 to **formally review the document, using mechanisms previously approved by the key actors**.
- It is a collective process of **dialogue/construction/transformation.**
- The national strategy should be coherent with the results of the process of public debate based on **equality/transparency/respect**.
- It is essential that the greatest possible number of actors, or at least the majority of actors directly concerned with the process, perceive the national strategy as a reflection of **broad social support**.

The implication of this "restructuring" is that **some of the preparatory activities to get ready for REDD+ will possibly be out of reach of the NJP due to time and budgetary reasons.** Nevertheless, the FCPF might provide support to continue the process and to that end, the government has resumed discussions and is readjusting relevant documents to set the date to begin implementing FCPF funds.

Approach for a Draft National REDD+ Strategy

Part of the "restructuring" of the NJP consisted in analyzing the **actual feasibility of undertaking coherent tasks** and would **lay a sustainable foundation for the continuation of the REDD+ process in Panama**.

A key aspect has been that the NJP was redirected towards a less ambitious -but possible- result: **developing a draft strategy proposal that could be debated among the stakeholders and would be constructed through a wide participatory process**.

For that purpose, the PPP was established to prepare a national REDD+ strategy as an instrument reflecting a national common vision so that REDD+ is understood as a wider process to address the national forest governance.

Within this context, there are **technical products (analysis, etc.) that are needed as a basis to build the strategy, but others will be required once the common vision reflected in the national strategy is defined.**

Looking at legal issues, for example, there are elements that need to be developed **prior to the strategy to provide technical options,** but ultimately, the participating stakeholders will **decide which legal options best fit their vision for a national REDD+ strategy.**

The implication of changing the focus is that possibly, part of the REDD+ preparatory activities wil remain out of the reach of the NJP due to time and budget constraints. Nevertheless, the FCPF may continue supporting the process and in that line, the government has resumed discussions and activities to receive the FCPF funds.

Given that the starting point for the proposal was the disagreement and breakdown of discussions, the consultation and participation phases are designed as follows:

PHASE A: Dialogue between ANAM and COONAPIP to reach agreement on the rules governing the participation of indigenous peoples in the next UN-REDD phase.

PHASE B: A participatory process to produce an advanced draft of the Panama REDD+ Strategy. This will take place throughout 2014.

PHASE C: Final draft and validation of the Panama REDD+ Strategy (it may not meet the deadlines set for the Panama UN-REDD results framework).

Concerning Phase B to develop a draft National REDD+ Strategy, participants opted to work in subphases. The proposal also included success criteria and conditions in accordance with the adopted values and principles. The following sub-phases were proposed:

1. Active listening review or early dialogues for pre-diagnostic: a participatory diagnosis of Panamanian society´s perceptions regarding the current status of forests and the challenges facing REDD+ in Panama. This includes:

    - an endogenous and self-administered consultation process for each of the 12 territorial entities of indigenous peoples -fully coordinated with COONAPIP;
    - two workshops in Afro-descendent communities;
    - three workshops in rural communities that are particularly dependent on and close to forested areas;
    - a series of 30 in-depth interviews with representatives from well-known environmental NGOs, international organizations (as distinct from UN agencies), the private forest sector, landowners and

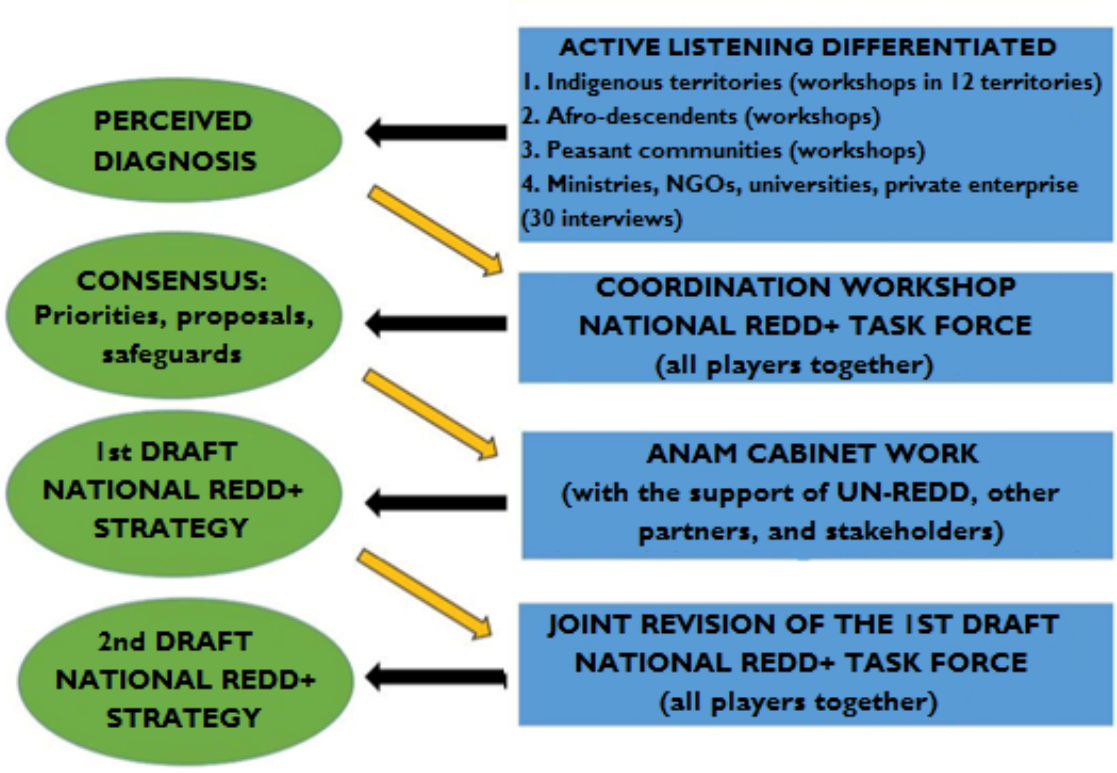
cattle farmers, academia and research centers and public organizations (including district or regional offices); and

- The four documents summarizing the workshops and interviews will be made available to the public and an additional summary of the four main groups will be prepared.

2. A concentration workshop on the main issues being addressed by the National REDD+ Task Force with the goals of: including broad participation of stakeholders so that they can discuss their perceptions; building consensus around the strategic problems facing forests in Panama, and assessing which of those can be addressed by REDD+.
3. Invitation from the National Task Force to draft the first version of the National REDD+ Strategy for Panama. This will be based on the previous items and with NJP support, ANAM will draft the first version of the strategy for publication and distribution. The National REDD+ Task Force will meet to review it and work on an advanced draft, providing recommendations to ANAM. The process may require a follow up meeting for additional review.

Then it is foreseen that ANAM will approve and issue an official version of the National REDD+ Strategy for Panama. Together with the technical products and participatory activities to continue reviewing previous draft versions of the strategy, this phase is expected to begin in 2015 and will not meet the current deadlines in the UN-REDD Panama Results Framework. Additional time will be available for stakeholders to reach agreement, especially as it also pertains to Free, Previous and Informed Consent (FPIC) or consent in the Panamanian context.

The following chart summarizes the process.



At the time of the initial draft of this report (May 2014), several of the workshops under Sub-phase 1 had been held. Furthermore, a document summarizing the series of 30 interviews is available and documents summarizing the participatory workshops are expected shortly.

2.5 RECOMMENDATIONS

FOR ANAM: Continue to restructure the REDD+ participatory strategy while maintaining coherence among the decisions, agreements and commitments made. Continue taking a leadership role in developing a strategy built around consensus and in accordance with the vision of each stakeholder.

In coordinating the current participatory process:

- Attempt to **increase the participation** and involvement of institutions that will have to support the process from within government, i.e. **Ministry of Economy and Finance, Ministry of Housing, Ministry of Industry and Ministry of Agricultural and Livestock Development.**
- Take into consideration **the legal issues relating to the design of the mechanism** in the first version of the strategy, providing enough time so that participants can fully comprehend the issues.
- Ensure the early involvement of actors that were not previously included, like: industry, infrastructure sector, mining and hydroelectricity, and local governments in key areas for REDD+ implementation.
- Ensure that the participatory process also involves vulnerable populations from within diverse stakeholder groups, including women and youth.
- Ensure that the process remains inclusive to engage and coordinate with other activities and donors that want to support REDD+ preparation readiness in Panama.

FOR ACP: Ensure that any pilot activities or projects conducted in the Canal basin yield lessons that are subsequently brought to the attention of national authorities for consideration regarding REDD+.

FOR ANAM, WORKING WITH MIDA: Maintain support for training activities for small-scale farmers and other parties that may be interested in forestry practices that are well suited to the soil types and forest coverage in each of the areas. Facilitate and increase information exchanges with MIDA.

FOR ANAM: Take advantage of any possible synergies for REDD+ to reinvigorate land zoning efforts (particularly in regard to watersheds) in a more coordinated and inclusive manner with the competent government authorities. REDD+ can support processes, but zoning must go beyond forest conservation to analyze sustainable landscapes, taking projects and future development models into account as well.

FOR ANAM: Take the opportunity to resume a review of the legislation on forestry resources, review pending issues and attempt to put them into effect to provide clarity on key legal issues necessary for REDD+ implementation and improvements to national forestry governance.

FOR PRCC: Closely monitor the lessons learned during the new participatory process in Panama and document those that might be useful for other countries in the region preparing for REDD+.

RECOMMENDATIONS FOR OTHER COUNTRIES IN THE MIDST OF PREPARING FOR REDD+: based on the approach that has proven useful in renewing dialogue and advancing the REDD+ process in Panama, include:

- The development of the national strategy can be a particularly important participatory instrument and an opportunity to build consensus around a shared vision of forest governance.
- Participation is the source of sustainability, legitimacy and stability.
- Readjust and modify program documents as needed to continue to make progress and comply with international commitments and evolving knowledge on REDD+.
- If necessary, redesign activities using a participatory approach and avoid overly ambitious objectives. There is a need to acknowledge: the complexity in the regulatory framework for land and natural resources; the historically conflictive relationships between the State and indigenous peoples/other actors; and the technical challenges in monitoring results and the complex institutional framework. Each of these components must be taken into consideration in designing the REDD+ strategy.
- Take the necessary time to conduct the REDD+ preparatory and participatory processes. REDD+ implies a different set of concepts and diverse sectors of society will take time to understand them, especially in the case of local and indigenous communities and rural inhabitants (*campesinos*). Furthermore, it is a long process that will extend beyond the implementation period of a given activity, well into the future. In this context, the government has a key role to play in coordinating initiatives and efforts.

3.0 POLICIES, LAW AND REGULATION OF LAND AND FOREST USE

There are several laws governing natural resource and forestry tenure that are also pertinent to REDD+ implementation. However, not all actors interpret these regulations in the same way, particularly in relation to their property and tenure.

Similarly, the legal framework relating to land tenure contains a number of perverse incentives that encourage deforestation, such as the demonstration of land ownership by logging. There are very few reforestation incentives and practically none for forest conservation. Some of these aspects were addressed in the proposed bill that was drafted in 2012 after considerable consultation, but the bill has not advanced further.

Forestry governance in Panama is quite complex, with high levels of illegal logging, few productive activities favoring reforestation to alleviate pressure on forests, and diverse conflicts related to the forest. This is exacerbated by the lack of legal certainty regarding land tenure, particularly in relation to forested areas. The legal framework for land tenure is very complex and includes private property, collective property, special indigenous territories (Comarcas), and private and public protected areas, some of which overlap with indigenous territories, as well as several lands on which collective indigenous claims have been filed and are pending resolution. The government has made several efforts which have somewhat improved the land tenure situation in recent years, but there are still a number of challenges to be addressed, such as clear demarcation of protected areas and indigenous territories, and resolution of claims for collective lands. These aspects must be addressed under the framework of REDD+ implementation so that the inhabitants of REDD+ areas are not adversely affected.

3.1 POLITICES, LAWS, AND REGULATIONS GOVERNING RESOURCE USE

3.1.1 Policies Governing Natural Resource and Forest Tenure

A- NATURAL RESOURCE TENURE

Natural resources are "of **public domain and of social interest** irrespective of the legally-acquired rights of individuals" and "concessions to exploit natural resources will be granted in accordance with current legislation" (Environmental Law, Article 64). **ANAM** exerts state authority to regulate the **use of natural resources** by issuing licenses and permits.

Natural Resources and Indigenous Territories.

One of the most controversial subjects between indigenous peoples and the State is the issue of who owns natural resources. The most relevant legislation in this regard is the following:

- The National Constitution stipulates that the State will regulate and take necessary measures to ensure that **renewable natural resources** are used rationally (Article 120) and **will regulate the use of non-renewable natural resources** in order to prevent social, economic, and environmental damage (Article 121). **The Constitution does not clearly specify who holds right of ownership over natural**

resources. It also contains provisions related to indigenous territories (Articles 123 and 127) designed to ensure the preservation and wellbeing of these groups.

- **According to the Environmental Act,** natural resources are under the **public domain.**
- In **indigenous territories,** although the State is the entity that authorizes the use of natural resources, the **indigenous people have a right to participate in economic benefits** resulting from them (Environmental Act, Article 105).
- The Inter-American Court and Commission on Human Rights has issued various opinions on limiting the use of natural resources, **understanding** that **resource ownership,** in the case of **indigenous territories, belongs to indigenous peoples** (Recio, 2011; ICHR, 2009).
- **Legislation for indigenous territories contains regulations on natural resources** (for a detailed review, see Recio, 2011). These regulations should be considered in relation to the natural resources in each territory, although they must be interpreted in harmony with applicable national and international regulations.

Examples of Territorial Regulations relating to Ownership over Natural Resources

- There are several provisions relating to natural resources in charter legislation for various territories. For example:

The Emberá-Wounaan territory:

- The Executive Decree creating the territory stipulates that **natural resources found on the territory are the collective patrimony of the Embera-Wounaan people.** The **General Congress, in coordination with ANAM,** will define and promote policies to protect, preserve, use, utilize, and sustainably exploit natural and environmental resources (Executive Decree 84 from 1999, Article 95).

The Kuna Wargandi territory:

- The Executive Decree creating the territory stipulates that **the natural resources and biodiversity** found on the territory are the **collective patrimony on the Kuna Wargandi people** (Executive Decree 414 from 2008, Article 53) and that the **utilization, protection, and preservation** of these natural resources will be carried out in accordance with national environmental laws and traditional practices (Article 54).

B- FOREST RESOURCES

Forest regulations are numerous and include various aspects that range from principles of forest policy to regulations on auditing, monitoring, and managing these resources. Certain key aspects of these regulations from both a tenure perspective and forestry resource perspective are relevant to understand what effects they will have in practice.

LEGAL FRAMEWORK FOR FOREST TENURE

As already explained above, there are several distinct interpretations of forest ownership. The following aspects are included in the provisions of the Forestry Law (Law 1, 1991):

NATURAL FORESTS	
Definition of natural forests	- **Woody, native** vegetation formation, predominantly trees, or which by its function and composition can be considered as such (Law 1, 1991, Article 5.1).

	- **Primary (**Article 1.12), **secondary**[15]**, intervened**[16]*, and* ***managed***[17] **forest are** included in the definition of natural forests (JD Resolution 05-98, Article 1.11.).
Exploitation permits	Since natural forests are part of the **State's forest assets, considered inalienable** (Law 1, 1994, Articles 10 and 12), the exploitation of all **natural forests** is subject to State-granted **permits or concessions,** regardless of land ownership. Practice and interpretation have led to the conception that natural forests are those **which have not been established or created by man, nor have been subject to managed regeneration.**
Other State forest assets includes lands on which natural forests are found	State forest assets also includes: **State plantations on State land, forestry-suitable State lands,** and **lands on which natural forests are found,** irrespective of ownership. This last point is also reflected in the 2008 National Plan for Forestry Development, which defines wooded areas as "State **forest asset** lands, which can be either **private property or State public domain,** the forest coverage of which must be **exploited in accordance with Forest Management Plans."** Therefore, it is possible for land to be private property, and at the same time be considered part of the State forest assets or patrimony, if it has natural forests.
This inclusion as State assets seems to be for protection purposes	In this sense, the **draft forestry bill prepared in 2012** proposes that part of the definition of State Forest Assets should be that "forested land in the national territory, irrespective of ownership, should be assigned by official forestry planning instruments to **protection and sustainable forestry production purposes."**
However, this provision is questioned by indigenous peoples and others.	The **ownership of these forests as expressed here is legally questioned by various stakeholders,** primarily indigenous peoples and territorial authorities, who maintain that the forests found on indigenous territories collectively belong to the indigenous communities, since they have ensured its preservation and protection.
ARTIFICIAL FORESTS	
This definition encompasses managed regeneration	**- Woody, arboreal vegetation,** established or created **by man (Article 5.2).** - *Reforestation:* **The action of populating or repopulating any type of land with trees or bushes, through plantation, managed regeneration, or planting (Article 5.7).** **-** *Forest plantation:* **Forest mass resulting from reforestation (Article 5.8).** **- Forests subject** to managed regeneration **and** resulting forests **will receive the same treatment as reforestation (Article 5.13) and must be recorded in** ANAM'S forest registry[18]**.**
In the case of "artificial forests on private property" planted at the owner's expense, the "owner" is allowed to utilize them when he or she deems convenient, **with the exception of forests protecting watersheds (Law 1, 1994, Articles 23, 24, and 42).**	
In the case of indigenous communities, "trees or forests established through plantation or reforestation can be exploited after notification to ANAM, as long as they are registered with ANAM (**Res JD 05-98, Article 50)." Therefore, registering artificial forests with ANAM is a key step in their legal utilization.**	

[15] **Secondary forest** is described as forest that develops **naturally** after the total or partial disappearance of the previous forest.

[16] **Intervened forest** is described as that which has been subject to **extraction of forestry products,** such as timber, palm heart, and others, causing **signigicant alteration** to its structure and original composition (Res JD 05-98, Articles 1-10).

[17] Article 5.13 of Law 1, 1994 defines **managed regeneration** as (Natural Managed Forest) the **use of silviculture techniques** to create, grow, develop, and utilize stands of trees naturally on any type of land. Resolution JD-05-98 defines it as: the **application of silviculture techniques and forestry criteria** to sustainably produce forestry products and preserve essential processes without jeopardizing the forest's renovation and biological and economic recovery capacities, in order to **ensure the sustainability of this resource.**

[18] Resolution JD 05-98, Art. 38 states that all natural arboreal vegetation on privately owned or held land which is derived from the enrichment, management, and administration of natural regeneration and of stands of trees, can be exploited. The managed trees and forests must be registered with ANAM (Article 39).

In short, the distinction between **natural and artificial forests, as stipulated by current regulations, lies in the application of silviculture techniques to manage, develop, and utilize the forest.** In practice, this is determined in their registration with ANAM and by the existence of a management plan.

Apparently, the objective is the **sustainable production of forestry products, without jeopardizing the forest's renovation or biological and economic recovery capacities.** In this manner, regulation attempts to promote sustainable forest management by allowing all those that do so to take advantage of the artificial forest regime, which, in principle, should differ from that of natural forests in terms of tenure and possible associated benefits.

This interpretation is disputed, especially by indigenous peoples, who disagree with the notion that the State is the owner of natural resources and forests found on their territories.

The difficulty in interpreting forest tenure, particularly as it relates to REDD+ and forest management in general, suggests that it would be wise to reexamine the way in which legislation addresses this subject. Otherwise, the Supreme Court of Justice will have the final word on the correct interpretation of the exact content of legislation. Nevertheless, REDD+ implementation will require greater legal certainty grounded in agreements that permit harmonious and undisputed management of resources.

FORESTRY PERMITS AND CONCESSIONS

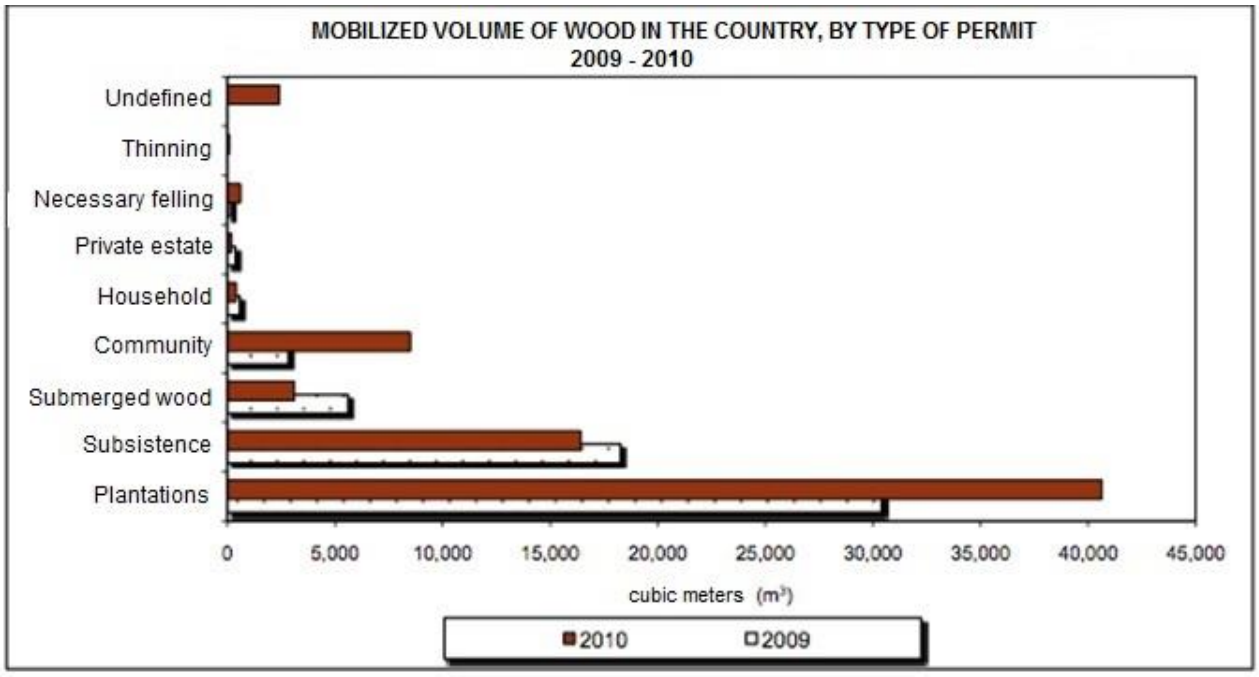
For purposes of exploitation, forests are classified based on their function, since **productive forest land** can be rationally exploited, whereas **forests for environmental protection and special forests** can only be harvested in accordance with their nature and the objective of their creation and in accordance with their corresponding management plans and technical guidelines defined by ANAM (Law 1, 1994, Article 25).

Forests (by function)	**Production forests: those in which it is possible to exploit economically-valuable forest products in a rational, intensive and sustainable manner.**
	Protection forests: those which are **nationally or regionally important to regulate water resources, protect watersheds,** dams, settlements, crops, infrastructure, or to prevent or control erosion, etc.
	Special forests: those dedicated to preserving **areas of cultural, scientific, and historical interest,** as well as other places of social interest and public utility.

As a reference, it is estimated that forests in Panama are comprised as follows (ANAM, 2008):

- 350,000 hectares of State **production forests** not within protected areas, including 150,000 hectares located within indigenous territories;
- 1,900,000 hectares of **protection forests** with strict restrictions on utilization. Forest Reserves multiple use areas, where exploitation is allowed, cover some 346,000 hectares of this figure. Private reserves should also be added to this; and
- 174,435 hectares of **mangroves,** 70,177 hectares of which form part of the **National Systems of Protected Areas.**

A number of requirements exist to ensure that forests are used in a sustained, well-planned way. These are summarized in the annex to this report.



Source: Department for Comprehensive Management of Watersheds, ANAM

As illustrated by the above chart, in practice, ANAM does not currently grant exploitation concessions, at least not in the Darien region, but rather is using subsistence permits (for individuals) and communal and private estate exploitation permits (CONADES, 2008).

Forestry activities are one of the **few economic opportunities** available to poor indigenous communities and rural farmers, leading them to cut and sell wood or allow others to do so, all of which is having an impact on species with a high commercial value, such as Cocobolo (Argüelles, 2010). Furthermore, **sustainable forestry production is expensive.** The costs entailed in drafting forest management plans and environmental impact studies can barely be paid off in a year's time and that does not include yearly operation programs or ANAM's, municipal and territorial fees in the case of private companies. There are further costs incurred by delays in obtaining forestry permits and/or authorization for forest management plans. In light of these difficulties, neither communities nor companies view forest management as a profitable enterprise and therefore all prefer to use permits that do not incorporate sustainability considerations (Gutierrez, 2010). As a result, the **primary current source of round timber for the national market is from communal permits from indigenous territories and subsistence permits from private estates.** This arrangement does not promote a steady flow of products to market, and technically, these permits should not be used for commercial purposes.

However, reducing the number of communal permits issued to avoid this situation has the undesirable effect of encouraging an increase in **illegal supply** to satisfy the growing national demand for wood (ANAM, 2008). Local production of raw, agricultural and forestry materials represents approximately 3.3% of national gross domestic product (Diaz, 2012).

3.1.2 Incentive-related Policies

The national legal framework contains few incentives for maintaining forest cover and various perverse incentives to deforest exist in different regulatory instruments, such as in the Constitution, Civil Code, and industrial and agricultural policies. They have encouraged the culture of "cleaning" away forest. Identifying and removing these perverse incentives should be carried out within the context of REDD+ implementation. Some examples are included below.

A- REFORESTATION INCENTIVES

Existing forest sector incentives are mainly directed at reforestation or plantation activities, rather than at maintaining areas of natural forest. These include tax incentives as well as temporary visas and long-term visas that can lead to citizenship in return for investments in reforestation.

The few incentives aimed at forestry activities are scattered throughout a number of regulations and policies. These are poorly implemented, and are focused mainly on promoting plantations (Diaz, 2012). Law 24 of 1992 (later modified by the 2005 Fiscal Equity Law) did include interesting reforestation incentives, which were subsequently decreased. Nevertheless, during its initial implementation, this law led to a significant increase in reforestation activities, albeit primarily through commercial species, such as teak (Diaz, 2012). Law 1 of 1994, the National Forestry Law, also attempted to include some incentives for reforestation and, to a lesser degree, for maintaining natural forests, for example, by making all private property **covered by natural or artificial forests** exempt from all national taxes (Article 43). **However, the main difficulty is not in the wording of the legislation, but rather in the lack of implementation of these incentives (Diaz, 2012).**

There are no specific requirements as to the type of species nor the way in which reforestation should be implemented in Panama. As a result, in Darien, the region with the highest rate of reforestation, there has been a **growing trend to reforest with exotic species, almost exclusively teak,** and as of yet, no studies have been performed to measure the impact on soil, biodiversity, and bodies of water. On occasion, plantations have been established on ground better suited to other types of crops (CONADES, 2008).

B- INCENTIVES INCLUDED IN THE 2012 FORESTRY BILL PROPOSAL

This **proposal,** which was drafted taking into account a multi-stakeholder consultation, but has yet to be scheduled for debate, prioritizes the creation of a forestry incentive regime which would incorporate a number of incentives.

Sustainable Forest Management Incentives in the 2012 Forestry Bill Proposal

The proposal includes an article containing sustainable forest management incentives and establishes some general guidelines, as follows:

- Inclusion of sustainable management of natural forests into the National Development Plan;
- An ANAM program for the propagation of native species;
- Incentives for forestry operations using forest managers and encourage certification through an international voluntary forest certification system, which would provide exemption from a percentage of the Forestry Regulation Fee;
- Creation of a Forestry Incentive Certificate, as a State recognition of the positive externalities of forestry activities (social and environmental services that benefit the rest of the society). This certificate would be transferable and used only by the bearer to pay any national taxes or fees.
- Compensation incentives for indigenous territories and collective lands once compliance with a management plan is verified; and
- Reduced fees for forestry operations that use a forest manager or a voluntary forestry certification scheme, based on the reduced burden on the State for monitoring and control.

The proposal also stipulates that ANAM will provide strong support to forestry stakeholders in helping them adjust their operations to become eligible for climate change mitigation compensation.

Lastly, authorized forestry harvest can qualify as real credit collateral if it has an ANAM-issued certificate regarding ownership, volume, species, georeferenced trees and mean commercial value.

C- INCENTIVES TO DEFOREST: "UNCULTIVATED" AREAS AND THE "SOCIAL FUNCTION" OF LAND USE

According to the Constitution, the State will not allow the existence of **uncultivated, unproductive or idle land,** and must encourage maximum productivity and fair distribution of all land benefits (CN, Article 123).

Similarly, private property entails **social obligations for the owner in light of the social function played by the property (**CN, Article 48) and the State **may expropriate** land through a special proceeding and by paying compensation for reasons of **"public use or social interest,"** as defined by law (National Constitution, Articles 48 and 51). At first glance, this appears to clash with maintaining forest coverage for conservation.

The old Agrarian Code contained disincentives and the possibility of expropriating "idle land" if it did not fulfill its "social function" (Law 37, 1962, Articles 33 and 34). The new Agrarian Code conserves the concept of social function, but expands it to also recognize the **social, economic, and environmental function of land. Thus, it states that the environmental function is fulfilled by using land to preserve and restore flora, fauna, and natural resources (Article 2.6).** Preserving or protecting the forest could fall under this category, although it must be highlighted that the expropriation procedure for "non-compliance with social function or urgent social interest" has a very short notification term and that the State can take "possession of the land without previous payment of compensation" (Article 251).

The new Agrarian Code states that the development of agricultural production carried out by **non-owning producers should be favored over non-producing owners** (Article 8). This, however, should be interpreted taking into account the obligation of the owner to correctly use the land "in accordance with its ecological classification, in order to avoid sub-utilization and reduced productive potential" (Article 125).

D- PERVERSE INCENTIVES TO DEFOREST: POSSESSION AND ACQUIRING RIGHTS OF POSSESSION

In Panama, many people do not hold title to the land on which they live, but rather have a title of possession that supports their defacto possession. A common practice when someone wants to buy a piece of untitled land is to make a "transfer of rights of possession" contract. There are a number of situations that are considered as demonstrating possession and that can help obtain a certificate of possession or proof of possession to acquire land belonging to someone else or to the State (through land grant processes). Some of these activities go against forest preservation objectives and therefore, these provisions can be viewed as strong incentives to deforest. The following chart describes some of the activities used to demonstrate possession, as set out in different pieces of legislation.

Regulations	Elements to Demonstrate Possession
Agrarian Code, Agrarian Possession	Must demonstrate "a good of productive nature" activity for a period of more than one year (Article 150). This can be shown by same means as ordinary possession (see below). Possession can be lost by abandoning the land or agrarian activity, cession of the right, or possession of other agrarian land or destruction (in conformity with Articles 150-156)
Civil Code	Possession should be demonstrated by positive acts, such as cutting wood, constructing buildings, planting crops, among others executed by the possessor without opposition by another (Article 606)
Forest Law	Deforesting lands that belong to the State asset does not provide proof of possession. However, the development of a land management plan does provide proof (Res. JD 05-98, art. 14).
Law of Islands and Coasts (Law 80 from 2009)	Acknowledges proof of possession when proving that the land is used for living, touristic activities, as well as agrarian, commercial and productive use of the land and documents provided by the official authorities that could prove domain of the property (Articles 3, 9 and 13).

Source: Recio, 2011

Although forestry and environmental legislation has attempted to change the consideration of deforestation as demonstrating possession, the legislation quoted above does not seem to be in agreement. This legislation had several impacts; according to Perafan and Messin: "**the Agrarian Code contributed to the impact on**

Darien forests with its concept of social function as a condition for obtaining a title, proof of which is provided by turning two-thirds of the requested land into crops or pasture."

3.2 LAND TENURE REGIMES

Legislation governing land tenure and property rights in Panama is complex and encompasses a number of tenure regimes. This report contains a summary of these regimes[19].

There are three main types of properties, according to the National Constitution: 1. *Private property,* which is guaranteed by the Constitution (Article 47); 2. *State property,* in a broad sense (Article 257 and subsequent articles); and 3. *Collective property*, which is established for two different cases: rural communities working agricultural lands and indigenous communities, in order to ensure their economic and social welfare.

The following chart is a summary of the different land tenure regimes and their related rights and issues.

Tenure Regime	Rights in Relation to Land	Main Conflicts Regarding Land and Forest Tenure
STATE PROPERTY	Use and enjoyment: by the state or can be given in concession or leased to third parties. Disposal: land can be disposed of as long as it is in an area authorized for that purpose. This right is limited in the case of forested land, protected areas and mangroves, among others.	- lengthy process for leasing and concessions. - high degree of informality: many properties still belonging to the State have been inhabited. - regulations to prevent land use change are not strictly enforced.
State-granted Concessions	Use and enjoyment by concessionary for the duration of the contract (regulated by the specific concession contract).	- usually used by third parties to use and exploit areas not authorized for land grants (e.g. coastlines).
State Protected Areas (PA)	Restricted use according to category and management plan, if available. Concession contract for services and Protected Area administration.	- boundaries of land occupied prior to creation are not clearly demarcated. - lack of management plans creates challenges especially in protected areas that overlap with indigenous territories. - invasions and illegal logging hamper management. - lack of funds to implement management plans.
PRIVATE PROPERTY	Use, enjoyment, and disposal. Can be transferred by contract and subject to real rights (usufruct, easements)[20].	- invasions, occupations, and illegal logging. - squatters. - lack of incentives to preserve natural forests, and limited reforestation incentives.
RIGHTS OF POSSESSION	Use and enjoyment. Disposal of rights of possession. Possessors have some protection from eviction.	- land cannot be levied nor can real rights such as easements or mortgages be created. - invasions, occupations, illegal logging.
INDIGENOUS TERRITORIES	Traditional use and enjoyment. These lands are self-governed.	- invasions by third parties, occupations, illegal logging.

[19] For a more detailed description, see E.Recio, 2011.

[20] In Civil law, real right refers to a right that is attached to a thing rather than a person. Real rights include ownership, use, pledge, usufruct and mortgage,

		- lack of boundaries, third parties already living within indigenous territories prior to their creation. - difficult coordination in areas that overlap with protected areas.
COLLECTIVE LAND	Traditional use and enjoyment. Government manages in collaboration with official authorities.	- numerous claims pending resolution, which generates territorial insecurity. - invasions, logging, use of resources.

3.2.1 State Property

All land without a private natural or legal owner (*tierra baldía,* as defined by Law 37 of 1962, Article 24) belongs to the State (National Constitution, Article 258). The State also has "patrimonial" lands, which are those acquired by the State (L. 37/1962, Article 25).

Adjudication of State Property

Unlike private land, State land (public land) cannot be acquired through acquisitive prescription by possessing or occupying it for a certain period of time. Rather, the State can adjudicate or grant land to individuals as outright property or by means of a lease. When land is adjudicated as property this may be free of charge or for a fee. According to the old Agrarian Code, all State land, with certain exceptions, is adjudicatable (Article 26). The exceptions include protected areas, coastlines and mangroves.

Furthermore, the State can grant concessions or rent certain pieces of real estate, which is not eligible for ownership adjudication, such as beachfronts, marshes, land flooded at high tide and protected areas.

3.2.1.1 Concession

Concessions are granted by the State for a specific purpose, such as developing real estate, hotels, marinas, etc. They are usually granted for a maximum of 20 years (renewable), and issued by the President of the Republic and a minister with jurisdiction over the corresponding area. For example, ANAM's General Administrator is in charge of granting concessions for renewable natural resources. The concession is guaranteed by the government through a specific contract stipulating each party's rights and obligations, and usually includes use and enjoyment of the asset. This option is frequently used for protecting mangroves and protected areas.

3.2.1.2 Protected Areas

ANAM has the authority, through the Executive, to regulate the creation of protected areas by means of laws, decrees, administrative resolutions, or municipal agreements (Environmental Law, Article 66), as well as to administer the National System of Protected Areas (SINAP) for the conservation of wildlife (Law 24 from 1995, Article 4.2). In 2010, SINAP had a total of 89 protected areas, which covered approximately 37% of the national territory or 2,922,648 hectares. Protected areas encompass a significant portion of the country's remaining forest and therefore are a **potential area for REDD+ implementation.**

MAIN TENURE CONCERNS OF PROTECTED AREAS

- ANAM can adjudicate **administration concessions** for protected areas (Environmental Law, Article 66).
- They can be created by **resolution** and are classified based on different management categories.
- They are regulated by the **legal instrument of creation,** as well as the respective **Management Plan,** if available. If there is no management plan, Yearly Operating Plans are used. Some Protected Areas have strategic planning, operating plans, and control and monitoring plans.

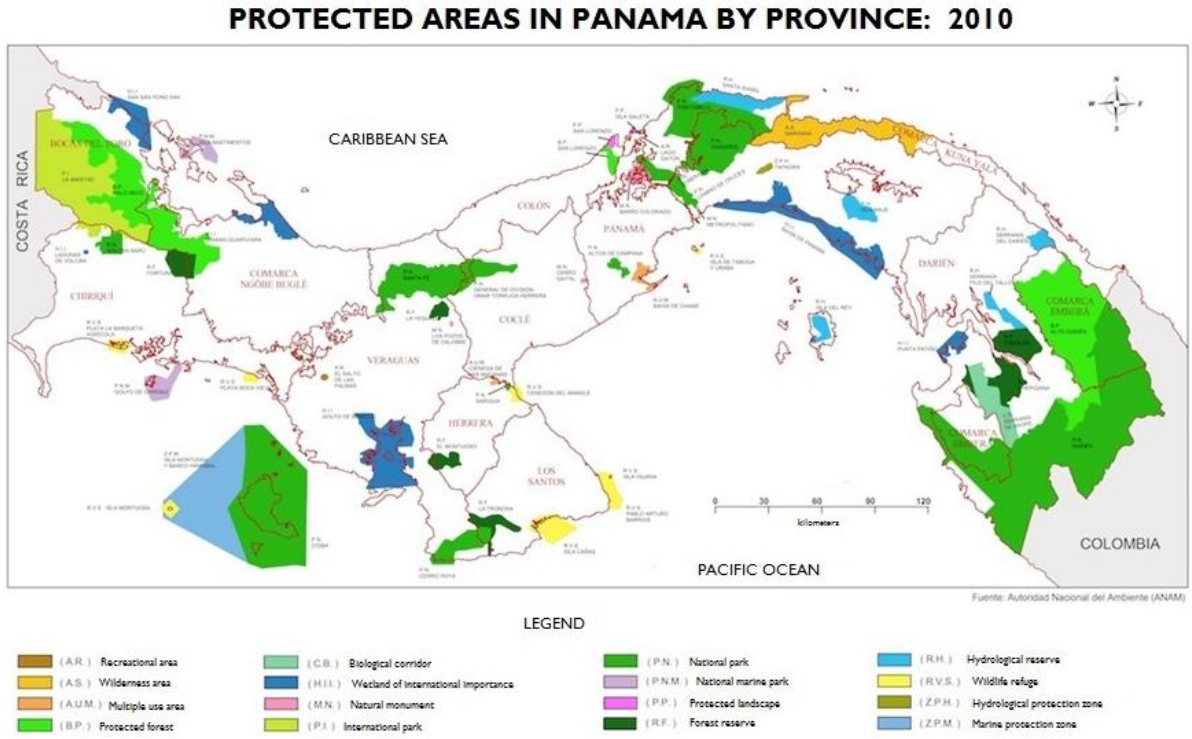
In practice, however, effective management is constrained by a **lack of resources to implement**

Concession Contract for Protected Areas

The Environmental Law allows for private participation in the management of State protected areas by establishing either **administration or service concessions.** Administrative concessions take place between ANAM and a foundation or private company that will carry out management and conservation activities. Service concessions take place to provide any type of services needed within the protected area. This allows **private individuals to participate in protecting public protected areas without affecting the inalienability or ownership of the land.** The concessionary has the authority to use and enjoy the goods under the contract and, therefore, the activity must be compatible with the area's objectives.

conservation programs and prepare management plans.

Following is a map of all protected areas in Panama as of 2010.



Source: National Comptroller, 2010.

Most of SINAP's protected areas, including those in the restricted management categories, such as national parks, **have people living within and outside.** Most areas had inhabitants or communities present at the time of their creation, in some cases with property titles and/or rights of possession. Those already there at the time of the area's creation are allowed to remain, but they must comply with the area's rules, taking into account the Management Plan and possibility of establishing co-management agreements. Accordingly, **the date the area was created acts as a type of "cut-off date"** with regard to the rights of possession and ownership inside the area's boundaries. If the inhabitants decide to sell their land, the State has the first purchasing option, through ANAM.

The protected area demarcation process is essential to establish outer boundaries, to identify the boundaries of properties belonging to inhabitant at the time the protected area was created, and to resolve problems of overlapping titles and claims. However, to date, very few protected areas have been demarcated.

This situation has arisen because prior to the creation of ANAM, and up until 2012, the only requirement to create a protected area was to submit a technical report to the competent authority. Although most protected areas did undergo a process that included an array of studies, there were no clearly-defined guidelines describing the process or minimum requirements in terms of documents. Concerning participation requirements, as established in Law 6 from 2002 on Transparency in Public Administration, the State must allow citizen participation in all acts of public administration that can affect the interests and rights of groups of citizens (Article 24) including actions such as building infrastructure and zoning, "among others." This was interpreted as enabling citizen participation in protected area creation. However, to date, the participatory processes have not been regulated, which is a missing, but necessary step to implement the law and provide legal certainty. Recently, a procedure was established to create and modify protected areas in Panama (ANAM Resolution AG 0916-2013), which includes a requirement to **describe boundaries, socio-cultural characteristics, tenure and social participation mechanisms.**

However, on December 23, 2013, the Supreme Court of Justice in Panama issued a ruling concerning a protected area created before 2013 that seems to take an entirely different view regarding the interpretation of the requirements. In creating the Panama Bay Wetlands Protected Area (Resolution AG-0072-2009 dated February 3, 2009) there was a lack of citizen participation, pursuant to Law 6, 2002. The Court ruled as follows:

1. **ANAM can issue resolutions to demarcate a protected area without undergoing a public consultation process.**

2. In doing so, it protects the **general environmental welfare.** If the Court were to annul this administrative action it would clearly contradict the intentions, principles and guidelines protecting Panamanian environmental legislation.

In other words, this would signify a **regression on environmental matters,** which would result in the Panama Bay Wetlands being excluded from a legal regime designed to protect and preserve existing ecosystems in this protected area. The **principle of non-regression** states that "legislation and jurisprudence should not be revised if this would imply a regression in regard to the previous levels of protection" (Pena Chacon, 2013).

Therefore, in relation to REDD+ implementation, the **demarcation and clarification of existing rights in protected areas, as well as the mechanisms needed to incorporate citizen participation in them is essential.** Potential conflict will also affect areas where indigenous territories and protected areas overlap, since **joint management of natural resources is required,** a challenge which many protected areas have not yet been able to address. **In 2008, an estimated 903,000 hectares of indigenous Comarcas territories (both current territories and those pending formal recognition) overlapped with protected areas including areas of significant mature forest coverage (Vergara-Asenjo, 2008).**

In areas where there are people living and/or indigenous communities that have occupied the land even before the creation of the protected area and that possibly did not participate in the proteted area creation, co-management (updated by Resolution AG-1103-2009) could contribute to sustainable management. In 2006, SINAP had 14 co-management experiences incorporating local stakeholders and organizations. A chart detailing those experiences up to 2006 was developed by ANAM (ANAM/UICN, 2006). **Co-management could be an opportunity to strengthen ANAM's institutional positioning in protected areas, as well as to engage communities living inside the boundaries or buffer zones engage in REDD+ in order to ensure the proper management and conservation of protected areas.**

3.2.2 Private Property

The Constitution recognizes private property (National Constitution, Article 47) and that it "entails obligations for the owner because of the **social function** that it must fulfill (Article 48)." The State can **expropriate** property for reasons of "**public use or social interest,"** as defined in the law, by means of a special hearing and compensation.

Ownership grants the **right to enjoy and dispose of goods and claim goods** from the possessor (Civil Code, Article 337). In this context, the Constitution establishes a maximum timeframe for the duration of **obligations or alienation of property**, stating there are no unalienable goods or irredeemable obligations, but that **temporary limitations on the alienation rights or conditions that delay the fulfillment of obligations can last up to a maximum of 20 years** (National Constitution, Article 292).

Depending on how REDD+ is addressed from a legal perspective, this regulation could result in limiting the assumption of obligations or conditions to conserve the forest to a maximum of 20 years.

Another possible impediment to REDD+ is that private property can be acquired by **acquisitive prescription,** after possessing the property in good faith for a certain amount of time. It is important to **avoid confusing forest conservation from an interpretation that the property has been legally abandoned.** As a result, it would be advisable that the provisions related to proof of possession be amended. The Forestry Law includes an incentive in this regard by **refusing to recognize prescriptive acquisition on private property classified as highly suited for forestry,** as long as reforestation and management plans are being executed or near execution (Law 1, 1994, Article 61). In any case, REDD+ implementation should provide **the landowners participating in forest conservation legal certainty vis-a-vis these risks.**

FOREST PROTECTION CONTRACTS ON PRIVATE PROPERTY

In order to have a brief overview of all the legal instruments for forest protection on private property, the classification proposed by Isaza in 2002 is included below. These include ecological easements, usufructs, private natural reserves, trust funds, loans, leases, donations, purchases and sales, and wills. All these are valid ways in which landowners, possessors or tenants can receive compensation for forest conservation. All have different characteristics, which should be taken into account in designing REDD+ mechanisms.

LEGAL INSTRUMENTS FOR PRIVATE PROPERTY LAND CONSERVATION IN PANAMA

Legal Instrument	Current Regulation	Description
ENVIRONMENTAL EASEMENT (ACTUAL RIGHT)	Civil Code, Article 573 and subsequent articles	Although the regulation describes only traditional easements, the concept is framed as a voluntary easement (Article 573) whereby an individual voluntarily provides for limitations in use or restrictions on his or her property for the benefit of the property of a third party with the purpose of conservation. The mechanism has not been widely applied in Panama. Proposed forestry regulations in 2012 planned to regulate some aspects of environmental easements, particularly legal issues (use restrictions in special areas such as riverbanks).
USUFRUCT (USE RIGHT)	Civil Code, Article 452 and subsequent articles	The beneficiary of usufruct is granted the use of an item and the proprietor maintains the right to dispose (sell) the item. To illustrate, the owner of a piece of property may grant the usufruct right to a conservation organization. In spite of it having a finite period, the arrangement allows for medium- and long-term conservation activities.
PRIVATELY OWNED NATURAL RESERVES	LGA, Article 68	Despite the fact that there has been a recent surge in private reserves established by individuals seeking to voluntarily conserve their property based on the environmental value, this article is still lacking relevant regulations.
TRUSTS	Civil Code, Decree 16/84.	An individual can temporarily transfer assets (property, money) to a third party (trustee) to be administered for a certain purpose. Panama has some examples of this with the Natura Foundation and

		there are other NGOs in similar circumstances in countries throughout the region.
LEASING	Civil Code, Article 1294 and subsequent articles	An owner of land that has environmental characteristics can lease it to a third party for conservation, including obligations to do or not do something for a specific period of time.
INHEIRITANCE	Civil Code, Article 797 and subsequent articles	The interested party may bequeath property to heirs with caveats; for example, conserving or maintaining environmental easements on inherited land.
LOAN FOR USE	Civil Code, Article 1432 and subsequent articles	A loan for use agreement may be applicable in providing a property to a conservation organization during a specific period of time for conservation purposes. It is somewhat uncommon because the arrangement only provides for use rather than benefits.
PURCHASE AGREEMENT	Civil Code, Article 1215 and subsequent articles	Ownership of an asset may transfer to entities for conservation using contractual clauses to restrict the property for conservation (usufruct, easements, etc.)
DONATIONS AMONG LIVING PERSONS	Civil Code, Article 939 and subsequent articles	Can be applied to donate lands to a conservation organization yet grant the usufruct to an individual qualified to manage the property.

Source: Isaza, 2002.

3.2.2.1 Rights of Possession

In light of the high percentage of land without property titles and the way in which people move around in the country, it has become very common for people to have "rights of possession" over a property and to transfer those rights to another as if they were **transferring ownership of the concerned property,** although all they are really transferring is the recognition of possession, the effects of which are much more limited than those of true ownership. Although the government has set out a number of initiatives to provide property titles and clarify tenure issues, there are still a large number of untitled properties.

Legal Effects of Land Possession in Panama

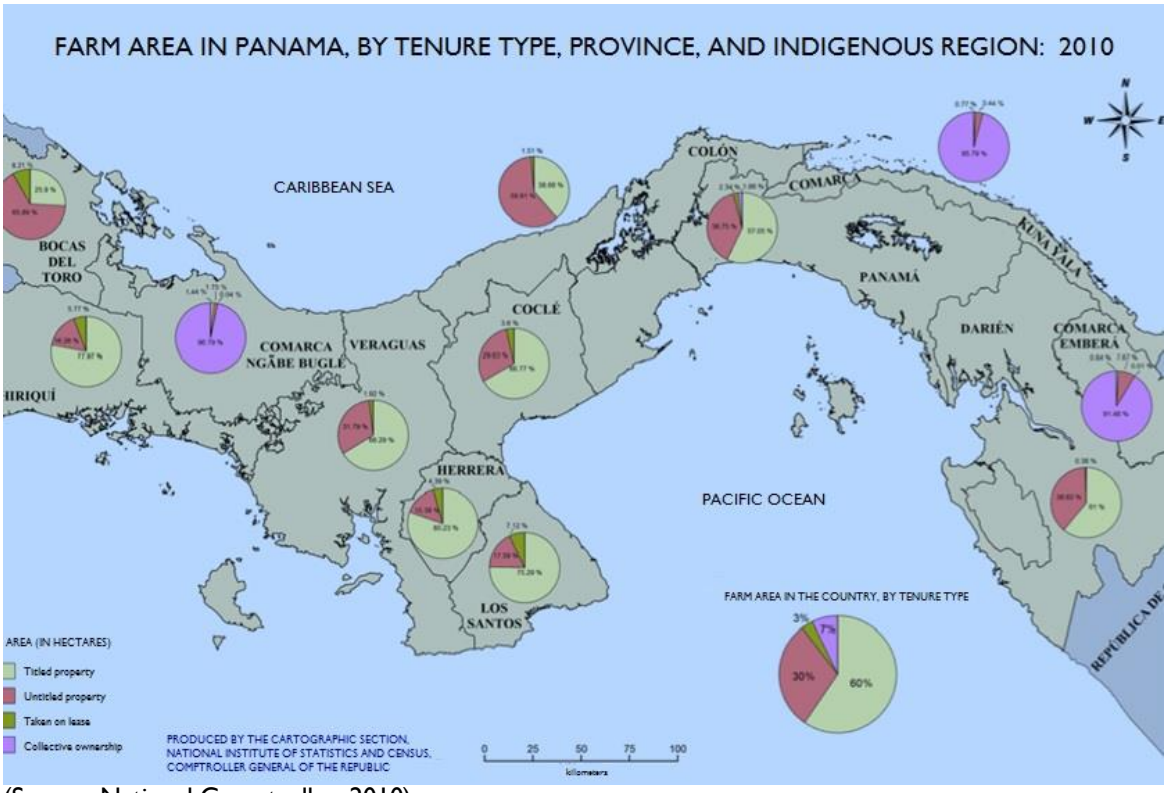
Possession is defined as holding a good or enjoying a right "**as the owner"** (Civil Code, Article 415). There are several provisions designed to provide legal certainty to the possessor of real estate which cover a number of relevant aspects:

- Effects of the possession (Civil Code, Article 432 and subsequent articles)**:**

1. Presumed **good faith** (in other words, the possessor believes that the land does not have another owner);
2. The right to **resort to courts to acquire, maintain or recover possession** (possessive actions);
   - possessive action can be established after possessing the land for **one year,** unless it has a registered property title (a third party is registered as the owner); and
   - if **evicted by the authorities, the possessor can resort to court action – the eviction in no way affects the rights of the evicted possessor**.
3. The possessor has a **right to the fruits** of the possessed object;
4. It can be **transferred or even bequeathed to third parties; and**
5. After a certain period of possession, ownership or domain can be **acquired through acquisitive prescription (or *usucapión*).** Ownership can only be acquired through prescription **if the land is privately owned (not if it is State public land).**

- Registration: In practice, a regional government authority can certify Rights of Possession (Cadastre, Agrarian Reform, Mayor, and Chief of Police/*Corregidor*) as well as transfer the concerned rights. There is no centralized registry.

The map below illustrates tenure in relation to agricultural activities. In the forest regions of Darien, Bocas del Toro, and Colon, the lack of property titles is much higher than in the rest of the country. Therefore, **it is absolutely essential that REDD+ consider incorporating policies to allow the participation of the actual forest managers even if they are not the owners of the land. Incorporating possessors (even those with a certificate of possession) could be a double-edged sword. On one hand, it would allow for greater participation, but on the other, it could spark a rush to grab forest land. This measure should be analyzed in depth to strike a balance between encouraging participation and avoiding creating perverse incentives.**



(Source: National Comptroller, 2010).

3.2.3 Collective Property

Collective property "is foreseen for two cases: 1) for *rural farming communities* in regard to agricultural land or plots[21], and 2) for *indigenous communities,* so as to ensure their economic and social welfare." The Supreme Court of Justice states that "it is evident that this is a different type of property, subject to a different legal regime (…) the institution of collective property is based on the **collective interest of a collective, a social group whose welfare as a group must be preserved and this purpose would be "adulterated" if the individuals of said group could make private use of the collective property or if they could lease or sell the land."**[22]

Indigenous peoples make up **12% of the population** in Panama. Roughly half of this group lives on the Indigenous Territories, which **cover 22% of the national territory**. Another large part of the indigenous population lives **outside the collective territories**. Some communities are filing claims to have the State recognize **"their" territories, "comarcas" or collective lands "tierras colectivas."** For that purpose, they

[21] For more information, see Recio, 2011.

[22] Supreme Court of Justice Ruling no. 7, dated September 24th, 1993.

will have to prove their "traditional occupation" of the lands, according to relevant law. To better understand these issues, the different types of indigenous land tenure will be analyzed from a legal perspective.

3.2.3.1 Indigenous Territories "Comarcas"

The Constitution establishes that "the State will guarantee indigenous communities necessary land reservations and collective property rights over it to achieve their economic and social wellbeing" (National Constitution, Article 127) and that "**the Law can create other political divisions, to subject them to special regimes or for administrative convenience or public service**" (National Constitution, Article 5).

Based on this, a total of five indigenous Comarcas have been created: three for *Guna* groups, one for the *Ngäbe and Bugle* people, and one Comarca for the Embera and Wounan peoples divided in two areas, Cemaco and Sambu. The "special regime" governing Comarcas territories guarantees that their collective property is imprescriptable and inalienable (National Constitution, Article 292). A specific law was passed to establish each separate territory, and four of their Charters were adopted through Executive Decrees.

Property belonging to indigenous communities is **not time-constrained, non transferrable, not subject to embargo and inalienable.** This means that it cannot be sold to third parties not belonging to the community, cannot be used as collateral for mortgages or any type of real right which could limit it, and it can only be transferred among members of the community. It can only be used for traditional uses and cannot be leased.

Authorities in Comarcas

Indigenous people are self-governing within Comarca territories, elect their own local leaders, and manage their own internal affairs through their traditional authorities.

There are **traditional authorities and public or official authorities.** In general terms, **traditional authorities** are **collective spaces at different levels** such as general, regional and local councils. In turn these are represented or led by an authority or dignitary with the responsibility for implementing agreements and decisions, such as general, regional, and local chieftains (*caciques*) or *Sáhilas*, etc. Territorial laws contain provisions regarding the relationship between traditional and public authorities.

The Criminal Procedures Code recognizes the authority of indigenous judges to deal with crimes committed within the Comarca territories according to "indigenous law," with the exception of homicide, drug-related and organized crime, and crimes against public administration or the national economy (Law 63- 2008, Article 48).

The Constitution grants indigenous communities the authority to elect their own congressional representatives, mayors, council members, and c*orregidores.* Currently seven of the legislators in the National Assembly are indigenous, three Ngabe and four Guna, which is proportional representation for the Ngabe Bugle people and above proportional representation for the Guna people (Anaya, 2014). As discussed in Chapter 5, the role of traditional authorities is fundamental to the proper functioning of the Comarca territories and also to develop the processes needed to obtain consent to implement different initiatives and projects.

There are **several conflicts** within indigenous Comarcas territories, including invasion by new non-indigenous settlers coming in to fell trees and establish dwellings. The Law recognizes the rights of non-indigenous possession that existed at the moment when each territory was created, as long as said rights of possession had been previously recognized by the competent authority (i.e. Agrarian Reform). However, since there is no clear record of these properties nor of their size, some possessors are extending their land and occupying land belonging to the territories. Others are invading the territories in the hopes that their possessory rights will be recognized as preceding the creation of the territory.

As with the case of the protected areas, the **demarcation of the Comarcas territories** and identification of the inhabitants already there at the time of their creation is a **serious challenge.** However, this could certainly help resolve current conflicts related to the invasion by new settlers and other actors who are exploiting forestry resources.

3.2.3.3 Collective Lands

Since the indigenous Comarcas do not cover all the land occupied by indigenous communities, particularly in the case of the Embera communities, Law 72, 2008 was passed to establish a **special procedure to grant collective ownership of land traditionally occupied by indigenous peoples and communities (Tierras Colectivas).** This land grant does not affect existing certified property titles and rights of possession (Article 10) and ownership is "imprescriptable, intransferrable, un-leviable, and inalienable"(Article 9).

Collective lands (Tierras Colectivas) are different to the special political-administrative regime of Comarcas territories. They will be **regulated by governmental and private entities that will coordinate with traditional authorities to implement plans, programs, and projects in the area** (Articles 14 and 15). The law states that the purpose of the collective land title is to ensure the welfare of the communities and that to achieve this purpose there must be cooperation with different authorities. It also recognizes that in the case of "invasion of collective lands, the competent authorities must enforce the rights of ownership in said areas" (Article 12).

After its publication in 2010, **several communities formally submitted their claims under the framework of this legislation.** According to reports, collective land titles were granted in June 2012 in two different areas, Cana Blanca and Puerto Lara, and collective titles have also been granted in Piriati-Embera and Alto Bayano[23]. There are two indigenous peoples, the Naso and the Bribri, whose territories have not yet been recognized, in spite of their efforts. In their areas there are currently conflicts with ongoing projects and/or third parties, and they are still waiting for their collective land petitions to be processed (Anaya, 2014).

Among the reasons for this delay, the corresponding authority (ANATI) states that they have an obligation to legally process claims presented by individuals over the same territories. However, in some cases like in the town of Platanares, this wait has led to further conflicts with third parties over illegal logging (Anaya, 2014).

The collective land legislation establishes that ANAM will coordinate with traditional indigenous authorities in each community to execute a sustainable natural resource and community development plan (Article 13), and should consult with them on the projects to be developed in their territories (Article 14).

3.3 LAND: DOCUMENTATION AND CONFLICTS

3.3.1 Land Registration

Panama faces a number of challenges when it comes to formalizing land ownership. There are efforts and programs to promote titling, as well as several changes currently taking place to the procedures for land titling and claiming collective territories.

Since 2001, the **"National Land Titling Program" (PRONAT),** is the main program used to regularize land ownership. It applies in the so-called "Regularization Zones" and allows the adjudication of State lands (such as public lands occupied by individuals with certificates of possession). In spite of the program's efforts, the titling process sometimes is stalled because of overlapping titles and the diversity of land-related claims and conflicts.

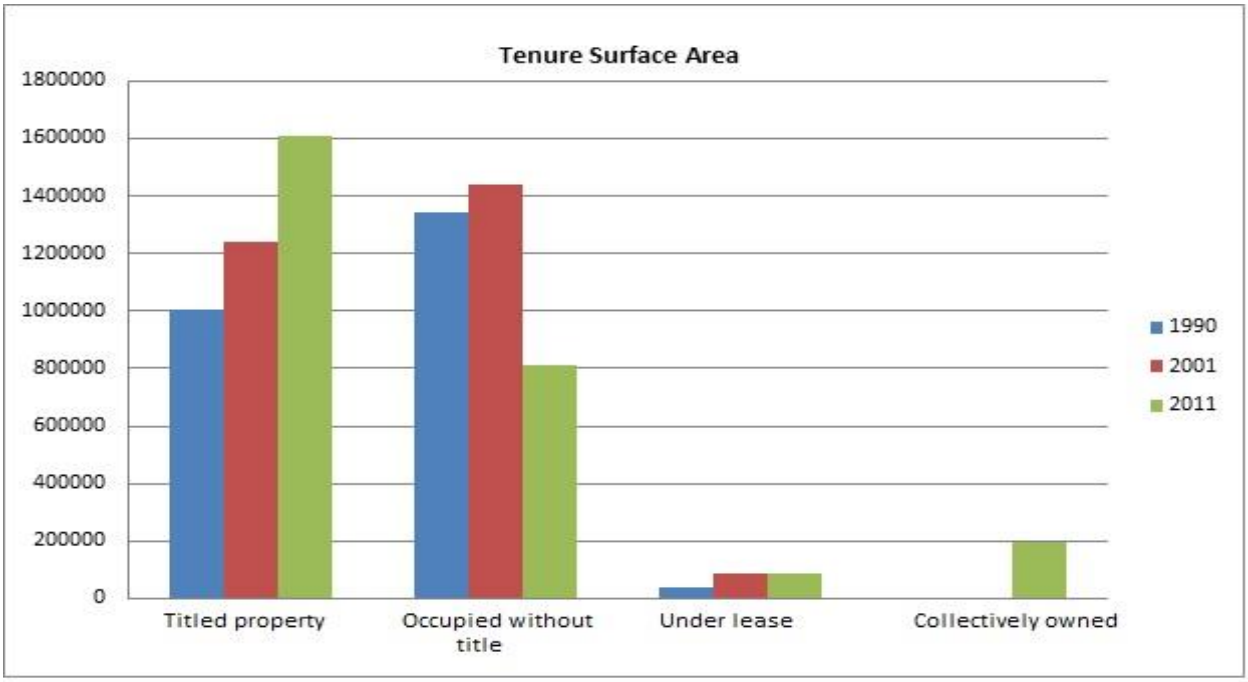
In **2011, there were approximately one million properties in Panama, 540,000 of which were registered in the Public Registry, and the remaining 400,000 of which held rights of possession**[24]. The main difficulties in titling this land include multiple titles and rights of possession being filed over the same pieces of property.

[23] Source: http://www.politicasindigenas.gob.pa/Seguridad-Territorial.html, accessed on January 25th, 2014.

[24] La Odisea de titular la Tierra, in: Martes Financiero Magazine, Edition N°683, dated June 14th, available at: http://www.martesfinanciero.com/history/2011/06/14/informe_central.asp

Up until 2010, there were seven different State institutions with competencies relating to titling and managing land ownership issues. However, **in 2010 the National Authority for Land Administration (ANATI) was created as the only State-authorized entity to regulate and enforce all land and real estate-related matters,** regardless of the type of property and legal status of the land. This law and the institutional changes it implied have brought about a **transition in titling and land administration processes that has resulted in delays in processing requests filed under the collective property law.**

Land Tenure Dynamics in Panama according to 1991, 2001, and 2011 agricultural censuses.



Source: (Mariscal, 2012, page 35)

Another change to the land tenure scenario in recent years has been the titling of islands and coastal areas. In an unprecedented move, in 2009 the government began titling **coastal areas and islands,** even though the Constitution states that these lands belong to the State, are for public use, and cannot be private property (Article 258.1). However, sponsors of this decision maintain that islands may be alienated only "for purposes specific to the development of the country" once the area has been excluded from public use and has been declared for "special development." Law 80 of 2009 was enacted to carry this out (Recio, 2011).

In spite of these institutional modifications, according to the legislation, **ANAM must be involved** in some titling processes, particularly in: 1) protected areas for occupants living there prior to the creation of the area; 2) physical demarcation of protected areas; 3) zoning and real use classification; and 4) titling and demarcation of indigenous territories.

3.3.2 Public Registry of Property

Ownership is established **through registration in the Public Registry.** Therefore, unregistered titles are excluded from the formal market. However, the requirement of registration to constitute ownership rights does **not guarantee that all transactions are in fact registered.**

Some of the main issues with the Registry include double registration and overlapping and uncertain boundaries. "There are also contradictions and discrepancies between the Registry, the National Cadastre, and the reality in the field. The regulations governing these institutions are inconsistent and confusing. Older titles

are imprecise and describe boundaries based on fence lines with neighbors and roads that no longer exist" (Díaz Espino, 2009).

Depending on the regime used for its application, REDD+ may possibly require registration of limitations on property use. Therefore, it would be essential to have the most up-to-date registry possible.

3.3.3 Land Use Modification

In order to reduce or restrict land use change, there are a number of provisions designed to engage ANAM in decision-making. Their implementation however, is relatively weak.

LEGISLATION TO PREVENT LAND USE CHANGE

- Before titles or rights of possession can be granted over State forestry assets, **ANAM must first inspect it, make a technical evaluation, and grant approval (Resolution JD 05-98, Article 13).**

- No one may "lease, sell, adjudicate, or alienate land with primary forests belonging to the State Forest Assets, **without prior evaluation by the corresponding authority and** approval of ANAM, **which will determine its use in accordance with its forestry aptitude" (Law 1,1994, Article 31).**

- To prevent land use change in areas with natural productive forests, this type of forest may not be converted to non-forestry activities (**Resolution JD 05-98, Article 12).**

- Property with forests and steep slopes, as determined in the guidelines, cannot change land use without authorization from ANAM; **although the exploitation of non-timber forestry products is allowed,** after submittal and approval of a management plan (**Article 3, Res AG 0092-2005). "The public title for adjudicated land should indicate existing surface of natural forests, areas of protection for rural aqueducts, and water easements" (Article 6).**

- State forest assets are declared inalienable, **in an attempt to discourage switching forests to other uses. However Law 1, 1994 stipulates that "State lands suited to forestry may be excluded** if agricultural or other activities aimed at public welfare are being implemented, **in which case MIDA's National Agrarian Reform Authority must agree with ANAM through corresponding mechanisms needed to reach these goals" (Article 12).**

Resolution AG 0092-2005 attempted to discourage land use change in Darien by declaring the following environmentally valuable areas non-ascribable (inadjudicable):

- Areas comprising SINAP;
- Conservation areas proposed by the Darien Land Use Plan (PIOT);
- Wetlands;
- Wooded areas that protect previously identified rural aqueducts;
- Land in natural forests with a high potential for producing environmental goods and services, except cases of permanent occupation or visible (proven), sustainable productive activity; and
- Natural forest areas deforested after the year 2000.

3.3.4 Institutions Responsible for Enforcing and Resolving Property Rights Disputes

As already mentioned, currently **ANATI plays a very important role in titling and other aspects related to land ownership.** Local authorities are also relevant actors in terms of clarifying possession rights.

According to Article 863 of the Administrative Code, national authorities should enforce laws and decide matters related to land grabbing. These are the President, provincial Governors, Mayors, *Corregidores,* night police, municipal councilmen, and police chiefs.

The court system also plays an important role by issuing precautionary measures, possessory actions, eviction notices, and processes to reassert ownership over land. Any person (natural or juridical) who wishes

to enforce a right (of ownership or possession) or file a lawsuit against a third party may make use of the court system. Cases are heard in different courts based on the value of the claim. Municipal tribunals hear smaller cases and larger cases are heard by Circuit Courts (Article 1230). Cases to which the State is a party are considered to be of greater magnitude (Article 664).

The country has also been promoting **alternative dispute mechanisms** regulated by Decree Law No. 5 from 1999, which establishes the alternative mechanisms of arbitration, out-of-court reconciliation, and mediation.

3.3.5 Resource and Conflict Rights

There are a range of land conflicts, primarily due to **high level of informality, invasions, lack of demarcation** in indigenous territories and protected areas, **different types of land use, and pending recognition** of some indigenous collective lands. These remain challenging to address in part due to the **poverty** in which many forest communities live in the interior of the country.

The legal definition of ownership of natural resources is a sensitive topic that has awakened controversy among indigenous communities and State authorities.

The high degree of conflict in certain cases has drawn the attention of the UN Special Rapporteur on the Rights of Indigenous Peoples. For example, on April 24th, 2009, he drew the attention of the Panamanian Government to a report on the alleged forced eviction of members of the Naso de San and San Druy indigenous communities in the Bocas del Toro province[25]. There have also been a number of conflicts related to the relocation of indigenous communities as a result of the installation of hydroelectric plants, such as in Alto Bayano and areas near Changinola. Many of these cases have not received an adequate response by the State, such as the case of the Guna community in Madungandi de Alto Bayano (case 12354), which reached the Inter-American Court of Human Rights where it is still pending sentencing. There are a range of conflicts between different projects and indigenous communities, as well as a number of situations where the authorities, including mayors and judges, are not aware of or do not acknowledge the importance of protecting Comarcas territories from encroachment and invasions.[26]

The Prisma report (PRISMA, 2013) and Huertas (Huertas, 2014) have documented some of the land and resource tenure conflicts that are facing the indigenous peoples of Panama.

In areas that overlap with protected areas, there are also various indigenous communities that must be taken into account, for example in the Palo Seco Protection Forest, the La Amistad International Park, Darien National Park, and Punta Paitino Wetlands.

Proposed Areas for Pilot Projects under the Regional Climate Change Program

The Nature Conservancy intends to develop a REDD+ pilot project in the Punta Paitino area within the framework of the USAID Regional Climate Change Program. However, the authorities consulted suggested bearing in mind that negotiations with Embera community leaders are being arranged with the government and that the adequate consultations should be carried out before carrying out any REDD+ preparatory actions.

There are certain legal issues regarding land tenure in this area, since this is a private protected reserve within which are indigenous communities whose land is not titled. Therefore, special attention should be given to aspects related to community rights before moving ahead with activities related to carbon sequestration and REDD+ in this area. If it is not feasible to take the time to carry out the necessary consultation and coordination prior to implementing the project, it could be recommendable to work in another part of the country.

[25] The contents of this letter were published in the Special Rapporteur's annual report to the Council of Human Rights (A/HRC/12/34/Add.1, paragraph 340 - 347).

[26] There are claims from communities that have not yet been addressed. For example, authorities implicated in illegal transfer of land, Panama America, September 21, 2011, available at: http://www.panamaamerica.com.pa/notas/1096157- , accessed January 28, 2014.

3.4 RECOMMENDATIONS

In light of the conflict surrounding land tenure in many aspects, REDD+ implementation should:

1. Take into account existing conflicts and uncertainties regarding land tenure to avoid excluding inhabitants that do not hold the title to their land and to make sure that they are not evicted or affected by third parties. An option here could be to include Possessors as participants;
2. Make use of the existing framework to promote land titling and demarcation, with special emphasis on indigenous territories and protected areas, as they may very well be key areas for REDD+ implementation;
3. Clarify land tenure rights as much as possible, particularly in REDD+ territories;
4. Contact and inform the relevant traditional authorities prior to any REDD+ project, especially traditional authorities in indigenous territories;
5. Verify if the current Registry is updateable and able to register REDD+ land or verify how REDD+ will be registered;
6. Ensure that indigenous land claims are resolved before implementing REDD+ in areas inhabited by indigenous people with pending claims under Law 72, 2008; and
7. Make sure that a mechanism is established to address REDD+ claims and quickly resolve related conflicts.

It would be unrealistic to think that REDD+ implementation can resolve all types of latent conflicts related to tenure. However it should at least attempt not to exacerbate them and contribute to their resolution.

ANAM and other government institutions play an important role training judges and other stakeholders charged with implementing tenure policies so that they understand the importance of protecting forest.

It is fundamental to establish coordination and distribution mechanisms in the case of protected areas that overlap with indigenous territories.

Prior to implementing the pilot project, the RCCP should take into account that there are ongoing conversations between the government and the Embera community. Punta Paitino presents certain legal difficulties related to land tenure, as it is a private reserve with indigenous communities living within it. Therefore, the project should coordinate with the national government (ANAM), as well as traditional authorities and the owner of the private reserve. If it is not feasible to take the time to make the necessary consultations and coordination, the project should focus on another area.

The implementation of REDD+ could benefit from the clarification of how rights associated to natural resources are related to land ownership. However, this clarification can take place not only through the adoption of a law containing provisions on natural resources rights –which maybe difficult to set in place for procedural and political reasons- but also through the establishment of clear provisions for the distribution of benefits in relation to land ownership.

The existing structure of permits for exploitation of forest resources can be a useful instrument to look at when considering the existing situations in relation to land tenure and resources ownership.

Although the implementation of REDD+ could benefit from the selection/design of a standard contract or instrument, the Panamanian legal framework offers a variety of instruments that can prove to be useful to that end. However, establishing a minimum criteria for REDD+ contracts that guarantee the respect of a minimum number of rights and ensures accomplishment of certain responsabilities could contribute to set up a basis for REDD+ implementation in the country by different actors with different land ownership situations.

Forest incentives as proposed in the Forest Bill proposal could be a relevant way of complementing efforts to protect forests and implement REDD+. Trying to remove existing perverse incentives to deforestation is key, particularly those related to acquisition of land ownership.

All the different types of land ownership, including possession should be dully considered in the establishment of REDD+ contracts. Given the variety of land tenure in Panama, it may be relevant to decide on priority areas where to focus REDD+ implementation e.g. where forests are still standing and communities depend on forests.

4.0 CARBON RIGHTS

There is no clear definition of who owns carbon rights in Panama. However, environmental and forestry policies refer to carbon sequestering as an environmental service and to the importance of ensuring that the benefits of forest management reach forest managers.

The definition of how the REDD+ mechanism will work in the country will have a substantial influence on the legal instruments used to make it viable. These include, but are not limited to usufructs, ecological easements, trusts, and private reserve programs. The mechanism could either be a decentralized one, for example following a "nested" approach, or could be more centralized. The country has relevant experiences for a centralized mechanism, including the current permit program for forest utilization. Equally, Panama has made some attempts to implement a payment for environmental services scheme modeled on the one developed by Costa Rica, but has not yet been able to do so. This would be suited to the centralized organization of the country and to the need to centrally monitor changes in forest coverage at the national level.

4.1 RIGHTS RELATED TO POSSESSING OR MARKETING CARBON

So far, no in-depth analyses on the possibility of marketing or possessing carbon have been carried out in Panama, with the exception of the UN-REDD study which mainly examines legislative provisions dealing with carbon rights, taking into account different stakeholders' perspectives and rights related to natural resources (Recio, 2011).

One of the most relevant legal provisions with regards to owning or trading carbon rights is found in the Environmental Law and stipulates: "The State recognizes **carbon sequesteration as an environmental service provided by the forest, and will establish mechanisms to gather financial and economic funds,** through internationally-agreed joint implementation programs" (Article 79). This provision, which could be the basis on which to develop certain REDD+ aspects, has yet to be regulated.

In Panama, there are several different interpretations regarding rights associated to carbon, as well as complex discussions on whom they belong to among different stakeholders involved. The issue is **politically and legally loaded,** and could perhaps be addressed through dialogue and governance approaches within the scope of the REDD+ mechanism proposal. However, this is a touchy subject, since it has fanned the flames of older discussions on land and natural resource tenure, as well as disputes about large-impact projects like hydroelectric plants and mining, which in the past have led to violent clashes between indigenous peoples and the State.

The NJP review report mentioned that initial discussions between ANAM and COONAPIP revealed diametrically opposite views on resources tenure. They decided to leave these for other political and legal arenas, "reaching a preliminary consensus to focus NJP's work on ensuring that the **potential REDD+ benefits reach communities.** The suspension of the National REDD+ Task Force has put this discussion on hold, although it is crucial to the preparation of a National REDD+ Strategy" (UN-REDD Program, 2013b).

The tendency has been to associate carbon rights with rights to receive benefits for forest protection and management. Some feel that there is a clear link between the REDD+ mechanism and proposed **payment for environmental services** programs, using the Costa Rican model as a point of reference.

4.2 CARBON CREDITS AND CONTRACT EXPERIENCES

There are not many experiences on carbon credits and carbon sequestering projects in the country, in light of: 1) the governance issues facing the forestry sector; 2) the reduction in incentives for those activities; and 3) the ambiguity of the legal framework. Some of the main experiences include:

- Under the framework of the **Clean Development Mechanism (CDM)** of the UNFCCC, and particularly the Kyoto Protocol, some projects, such as hydroelectric plants have been certified to receive carbon credits with the backing of the State, which has prepared a portfolio of CDM projects.
- There are also several different reforestation initiatives carried out by State entities and private actors, for example, the Panama Canal and the **voluntary certification** of reforestation projects**.** These initiatives will most likely use **usufructs, trusts, contracts, and private reserve approaches.**
- Lastly, there have been bill proposals to provide the legal framework for **payments for environmental services** program though these have not been passed yet.

It is difficult to gauge the results of these experiences at this time, since most have just begun or have a limited scope.

4.2.1 CDM: Legal Framework and Projects

ANAM is the CDM Designated National Authority (DNA) for Panama. All necessary requirements and procedures to grant a letter of non-objection for CDM projects were established in 2011 (Resolution AG-0155-2011). The legal framework stipulates that an Environmental Impact Assessment will be used to enable the implementation of a CDM project. Although there are a few different types of CDM projects in Panama, the majority are hydroelectric projects. According to the most recent report, Panama has submitted 32 projects, nine of which are registered (Panama also has the longest average delays in terms of issuing credits in the region) (Gutman, 2012.). There are also wind generation and methane recovery projects, among others.

Nevertheless, **CDM implementation in Panama has been somewhat limited** for a number of reasons, including the following:

- Delays in processing endorsement letters from the environmental authority;
- Delays in carrying out the Environmental Impact Assessment;
- A need to train operators, officials, and business people on how to implement different technical aspects of the mechanism;
- Social issues that have arisen as a result of different projects, such as hydroelectric plants; and
- International devaluation of carbon credits (lack of incentives).

Specifically, no CDM projects for forestry or reforestation are yet registered.

4.2.2 Other Projects and Use of Other Legal Instruments

PANAMA CANAL PILOT PROJECT AND THE USE OF USUFRUCTS

As set forth in the Environmental Economic Incentive Program (PIEA), the canal is currently developing "The Green Route", one of the four main pillars of which is to reduce emissions from the operation of the canal (see Chapter 1 of this report). The ACP intends to sell resulting carbon credits from forest protection in the Canal river basin on the voluntary market. The ACP will sell **these rights.**

The Panama Canal Record dated September 6th, 2012 discusses Agreement 239 (August 30th, 2012), which enables the Authority to:

exploit and commercialize rights derived from carbon fixing and oxygen produced by natural resources (i) found **on the Authority's patrimonial goods;** (ii) found in **areas administered by the Authority;** (iii) found on **areas reforested by the Authority;** or (iv) **forming part of the Panama Canal Watershed.**

ACP Contract with landowners throughout the Canal Watershed:

In the context of the PIEA, the contract entered into with the landowners is a **ten year usufruct in favor to the ACP, extendable by two five-year periods**, as is described in the documents of the Canal's certification with the Climate Community and Biodiversity Standards (CCBS). Some of the main aspects of the contract include:

- The owner agrees that the ACP may initiate **reforestation, agroforestry, or grazing and pasture activities on the parcel of land** and will receive the fruits thereof without seeking payment from the ACP.
- The owner grants the ACP **usufruct over the forest coverage and irrevocably accepts that the ACP will hold exclusive rights to the environmental carbon sequestering services produced** (on the indicated parcel of land and forest coverage), and accepts the **commitment to follow up on caring for** the planted trees and refrain from felling the plantation and forest coverage.
- The ACP will care for the plantations for a maximum of 20 months.
- After the third year, **a yearly payment based on an opportunity cost assessment** will be made to the owner.
- The usufruct will last for the duration of the contract regardless of **sale, grants, or liens** on the estate, since the **usufruct is registered in the Public Registry.**[27]

So far there are no reports on the effectiveness of this type of contract, since the canal has yet to finish the details on the operation of the program or on the sale of carbon rights. Using real usufruct rights could be a legal option for REDD+ implementation, since it allows for property registration and subsists regardless of sale or change of ownership. However, it has serious legal consequences and can only be entered into with private owners who hold ownership rights (not in collective lands or with possessors).

Possible actions taken by the ACP to sanction non-compliance should be carefully assessed, as they could have a serious impact on the livelihoods of low-income people. Furthermore, the lack of clarity regarding the amount of the yearly quota paid to the owner could be a disincentive for participation, particularly taking into consideration that the compromise by the owner lasts for ten years and the support provided by the ACP to maintain the crops planted in the area are expected to be for a shorter period.

TRUSTS

There are other experiences related to reforestation and sustainable development, although not specifically aimed at carbon rights sales. Some of these, such as the Darien Fund, the Chagres Fund, and FIDECO, have used NGO-administered trusts (in these cases done by the NGO *Fundación Natura*). This system seems to have worked quite well for many years for implementing small development projects aimed at training and transferring small sums to community-based organizations (CBOs) or smaller NGOs under the supervision of the NGO responsible for executing the funds.

Many countries throughout the region use this type of public-private trust system, including Colombia, Costa Rica, Mexico and Ecuador. For example, the NATURA Foundation administers funds through its executive board and an oversight committee comprised of both civil society organizations and State entities. Using this

[27] Panama Canal Authority Sustainable Forest Cover Establishment Project for CCBS, MGM Innova, March, 2012. Available at: http://www.climateprojects.info/chameleon/outbox/public/197/10358/PDD_ACP_CCBS.pdf, accessed on May 10th, 2014.

type of system has the advantage of preventing funds from getting lost in the public coffers and makes sure that they are used for the project they were intended.

PRIVATE RESERVES AND GREEN TRUSTS

Private reserves can be another conservation option. Panama has established an autonomous **Private Nature Reserve Network (RRNP),** a non-profit association founded in 1999 to promote the conservation of forests and high-value ecosystems. The Environmental Law recognizes the role played by private reserve owners and has established a series of fiscal incentives and market mechanisms to support them (Article 68).

Legal ways to voluntarily protect private land include **private reserve contracts, ecological easements, and conservation trusts.** In 2010 there were some 30 private nature reserves in Panama, occupying approximately 40,600 hecares (ANAM, 2010).

PAYMENT FOR ENVIRONMENTAL SERVICES AND REDD+

A centralized REDD+ system could not only enable carbon sequesteration compensation internationally, but also at the national level and could also take into account other types of environmental services.

As specified in the R-Plan, based on Article 15 of the JD-05-98 Resolution, **ANAM is authorized to adopt carbon dioxide capturing measures,** as it can establish **mechanisms to stimulate and promote the establishment of plantations and natural forest management.** Additionally, in Chapter V of the Environmental Law, dealing with air quality, a specific reference to carbon sequesteration stipulates that: "The State recognizes **carbon sequesteration as an environmental service provided by the forest and will establish the mechanisms to capture financial and economic resources through internationally-agreed joint implementation programs"** (Article 79). This could be the basis for developing regulations on a national payment for environmental services (PES) strategy, including a submitted bill proposal (405-2008) in 2008 to that effect. However, this proposal did not take off and, as a result, the country still does not have any regulation on PES.

Another issue has to deal with how to **legally develop PES regulations.** Whereas in principle ANAM can issue a resolution to do so, a careful assessment should be made as to whether that would provide the participants with sufficient legal certainty, perhaps as a temporary regulatory framework until a law or executive decree can be adopted. It should also be taken into account that ANAM is not able to directly submit decree proposals to the President, but must go through the Ministry of Economy and Finance (MEF) to do so. If approval were to be sought for an executive decree, the support and interest of the MEF would therefore have to be gained.

In spite of the aforementioned difficulties, several of the stakeholders interviewed and some of the participants in the consultations carried out by UN-REDD highlighted the **possible utility of establishing a PES system.**

OTHER RELEVANT CONTRACT ASPECTS

Once land and resource tenure aspects are clarified and participating landowners give their consent, the **government could engage with international buyers** to negotiate the sale of REDD+ credits. In this sense, contracts and agreements with landowners, as well as management plans drafted in coordination with the relevant actor (land inhabitants) would be instrumental.

In developing REDD+ agreements, **key aspects such as benefit management and the responsibility of different stakeholders/institutions/State should be considered.** With regard to non-compliance with management responsibilities by forest communities, it should be understood that, in addition to non-compliance by community or land owner itself, the greater risk to REDD+ relates to invasions by third parties and illegal logging (which would generate non-compliance without the communities itself being at fault). Therefore, it is essential to incorporate mechanisms to address these possible infringement situations and work to reduce illegal felling of trees.

4.3 CARBON PROPERTY RIGHTS

There is no clarity as to the ownership of rights associated with carbon. There are various interpretations and views on the provisions set out in the legal framework, but none provide sufficient legal certainty to be used as the cornerstone of a national REDD+ mechanism. It is worth asking whether it is truly necessary to define who holds carbon property rights, or if it would be better to focus on environmental service of carbon sequestration and on how to ensure that benefits and responsibilities are distributed fairly and equitably between forest managers and the central monitoring mechanism.

The following chart details some of the principal aspects of the different interpretations of rights associated with carbon. There are two main interpretations.

Legislation	Interpretation	Problem
- "air is a public good. Its conservation and use are of social interest" (Environmental Law, Article 77). - "The State recognizes **carbon sequestration as an environmental service provided by the forest** (…)" (LGA, Article 79).	***I- Carbon as a public good – not subject to ownership (inadjudicable)*** This interpretation is based on the idea that the environmental service of carbon sequestration is covered by the chapter of the Environmental Law on air quality. This line of thinking, sustained by some interviewed, would mean that carbon sequestration is covered by the same legal framework as air and is therefore **a public good that cannot be appropriated.**	This interpretation would make it difficult to incorporate carbon as merchandise (commodity), and decrease the chances of private investment in forest carbon (Takacs, 2009). As previously mentioned, there are private reforestation projects underway within the framework of the voluntary market and, in the project approval forms it states that the benefit of the relevant service belongs to the land owners. If carbon were to be interpreted as a public good, as proposed, this would call into question this legal basis.
Ownership with basis on accession - Through the process of accession, ownership gives the right to everything produced, attached, or incorporated to said good, naturally or artificially. (Civil Code, Article 364) - Natural fruits are those "provided by nature, assisted or not by human industry" (Civil Code, Article 366). **Ownership of renewable natural resources:** Natural resources are "of public domain and of social interest irrespective of the legally-acquired rights of individuals" and "concessions to exploit natural resources will be granted in accordance with current legislation."	***II- Accession of carbon to natural resources.*** The **carbon incorporated into forestry/natural resources through accession belongs to the owner of that resource,** or could even be considered a natural fruit (Takacs, 2009). **Who owns forestry resources?** 1- According to the Environmental Law, since forestry resources are natural resources and public domain, **forestry resources belong to the public domain.** 2- According to forestry legislation (specifically) there are two interpretations: - **all forests belong to the State, including natural forests, as stated in the forest law, and artificial forests,** because property rights are not asserted literally in the	The first interpretations are disputed by indigenous groups, who point out several territorial and constitutional provisions for the welfare of the territories that make reference to forestry resources, The existence of several interpretations on natural resources ownership could lead to speculation and legal insecurity. In light of the sensitive nature of the topic, it would be wise to adopt a law that provides greater legal certainty for specific cases. If the interpretation that carbon belongs to the State is followed, the legal framework for the implementation of the mechanism should be reviewed accordingly (concession, permit, authorization).

(Environmental Law, Article 64). **Ownership of forestry resources:** Law 1, 1994, Article 10: State Forest Patrimony is comprised of all natural forests, the lands on which those forests are found, State plantations on State lands, and State land suited to forestry activities (Article 10). There are different provisions for harvesting from artificial forests compared to natural forests.	latter case (ANAM through permits provides a concession to use forest resources); - **natural forests belong to the State and artificial forests belong to the person or community on whose land they are planted.** 3- A holistic interpretation of constitutional provisions could lead to understand that forestry **resources and natural resources within indigenous territories are the collective property of the indigenous community to ensure the wellbeing of the group, with basis on Articles 123 and 127**. This view is supported by indigenous groups.	
Environmental Service "The State recognizes **carbon sequesteration as an environmental service provided by forests and will establish mechanisms to capture financial and economic resources,** through internationally agreed joint program implementation" (Environmental Law, Article 79).	***III- Provision of carbon sequestration as an environmental service through forests practices*** Carbon sequestration is an "environmental service" provided by forests. Forest managers do certain things and do not others and, as a result, the growth of forest cover provides emission reductions in carbon emissions. Therefore, the type of management allows the forest to provide an environmental service.	This last option, which is more in tune with the interpretation that carbon sequestration is an environmental service as expressed in the ACP initiative, could provide flexibility for the debate currently taking place in Panama, particularly concerning polemic issues such as the property of natural and forestry resources.
SUBSOIL CARBON		
The Constitution stipulates that subsoil "riches" belong to the State and can be exploited by State or mixed companies or can be the subject of concessions or exploitation contracts, as established by Law (Civil Code, Article 257).	The Fiscal Code defines the "natural riches" of the State and does not include carbon or any analogous component. However, based on a broad interpretation of the term, soil carbon could be considered one of the "riches of the subsoil". Its "exploitation" or protection would then belong to the State and should be regulated by law.	This element was taken into account for this analysis, although there are mixed opinions regarding its relevance. Some consider subsoil carbon to be a "marginal" element and others believe it has reference value only, since the forest cover stores a more relevant amount of carbon dioxide.

Understanding the legal nature of carbon sequestration according to national legislation is relevant to select the most adequate legal instrument to establish agreements with forest managers and to legally consider the benefits to be received for the carbon sequestered. It is essential to determine how those benefits will reach the forest managers and will provide legal stability to the REDD+ program.

In this regard, adopting legal formulas with no adequate reflection in the reality of the communities living in the forests would result in rendering the implementation of REDD+ impossible or create deficiencies in implementation. Consequently, the legal formula to be used must incentivize communities to associate with and support the program, provide the basic provisions for cases of non-compliance and the essential aspects

concerning the allocation of benefits. It would not be advisable to overlook this aspect and use a legal formula that incentivizes greater social conflicts. Eventually, if this occurs, it will hinder the implementation of REDD+.

With a focus on the national legal framework, understanding carbon sequestration as an environmental service could be a basis to consider the development of contracts for payments for environmental services. In general, the object of this sort of contract is the provision of an environmental service, such as carbon sequestration.[28] This means that the "buyer" pays for a certain amount of units sequestered of carbon or not released to the atmosphere. The "seller" will receive a payment upon verification of the result of a certain amount of units of carbon sequestered. If the result is not achieved, the seller will not receive any compensation or only partially.

If the environmental service is naturally provided by natural resources, who would be the seller of carbon sequestered? Is there an owner of the carbon sequestered? Does the legal framework provide who owns the environmental service? In most cases, as it is in the Panamanian legal framework, the answer is negative. The legal framework does not define who owns the environmental service and neither does it foresee splitting the rights related to carbon ownership and to the forest resources providing the environmental service. The national legal framework provides only that the State "will establish the mechanisms to gather financial and economic resources (for carbon sequestration) through programs to be jointly implemented and internationally agreed" (Article 79). Ownership rights to carbon, as such, were not established, however, some interviewees suggested that, according to the law, carbon sequestration is a "public" good (First option in the table above.)

Is it possible, in this context, for a community living in the forest to sign a contract with a third party or with the State to receive a compensation for the provision of the environmental service of carbon sequestration? How can this be determined? Rights of ownership in relation to environmental services are usually associated to ownership of the natural resources that provide those environmental services, meaning the forests and the land, taking into consideration that carbon sequestration would fit under the category of "natural fruit" due to its "accession" to the natural resources (Article 364, Civil Code) (Second row in the table above). This implies that if the forest resources belong to someone, the benefits or fruits generated due to accession of carbon to those resources would belong to the same person. Consequently, the person could sign agreements with the State or third parties to receive a compensation for the result of a certain amount of carbon sequestered. Additionally, in the legal framework that the property of the forest resources is linked to land ownership, it is generally understood that the property of the carbon sequestered accrues to the land owner. However, in the Panamanian legal framework, under the literal interpretation of the environmental and forest law, the forest resources do not necessarily belong to the owner/usufructuary of the land but rather to the State, regardless of who owns or has usufruct rights to the land. Under this interpretation, the benefits related to carbon sequestration should be considered as public or belonging to the State.

In this context, the State could grant permits to exploit or benefit from the environmental services of carbon sequestration to the owner of the land or usufructuary, as a means to enable forest dwellers and land owners to sign agreements with third parties (universities, enterprises or international buyers) to receive a compensation for the carbon sequestered. This would ensure that the national authority is aware of the carbon sequestration initiatives taking place in the country for monitoring and accountability purposes. This would be also instrumental if any tax is established to fund national REDD+ functions. Under this scheme, the owner would assume the risk of any possible non-performance of obligations and therefore of not receiving the compensation if the expected result is not achieved. This point is particularly relevant concerning actions by third parties (invasions, illegal logging).

This would be a complex solution to implement because, as mentioned before, the interpretation of natural resources ownership is questioned by different social sectors, in particular indigenous peoples, who support

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

their ownership with a basis on various law provisions. Using as a basis for REDD+ a legal provision that is highly questioned could be a destabilization factor and result in incentivizing social conflicts and further deforestation.

Another alternative is establishing contracts with the object of carrying out certain practices or uses of the land, which are assumed to provide an environmental service of carbon sequestration, such as forest conservation or enhancement. In this case, the "buyer" (State or a third party) takes the risk that a certain amount of carbon sequestered would be the natural result achieved if the owner/usufructuary implements certain activities to manage and use the land. In other words, the compensation is provided with basis on the implementation and avoidance of certain land management activities rather than the measurement of the resulting carbon sequestered.[29] If the owner/usufructuary respects the activities agreed with the buyer, he/she receives the compensation, regardless of the units of carbon secuestered. If the activities are not performed or the forbidden activities are undertaken, he/she will not receive the compensation agreed or a part of ir.

According to this alternative, would it be possible for the owner to carry out agreements with third parties (universities, enterprises)? The answer is related to the existence of a land's property or usufruct deed. If a community has an acknowledged right to use land use and is able, from a legal standpoint, to provide guarantee of which activities will be carried out in the land, then the answer is yes. This guarantee implies having a right to go before the competent authorities and present a claim if a third party undertakes illegal activities in the land.

In the Panamanian legal framework the norms provide a clear definition of different modes of land ownership, although in practice there are conflicts about the regularization of land. Ensuring that communities' rights are clear before implementing REDD+ in any particular context seems to be essential, but it is also relevant to guarantee that this does not result in *de facto* eviction of those forest dwellers without a property deed. If it is not possible to provide them the property deed of the land through the regularization process, acknowledging the communities' usufructuary rights could be instrumental to protecting their rights, which may result in granting them a status as possessors. The legal framework recognizes ample rights to the possessor for using and safeguarding the activities undertaken in the land under possession. This issue could be further sensitive with regards to the indigenous communities that have pending petitions for the recognition of their ownership deed to collective lands.

The possibility of establishing contracts to compensate certain activities or land use could, however, present limitations *vis-a-vis* landowners willing to be compensated under the international voluntary market, as usually in this case compensation is provided with basis on units of carbon sequestered (different alternatives are applied).

This option could also be implemented through agreements between land owners and the State, and this would eventually apply for compensation for the resulting amounts of carbon at the international level through voluntary and compliance markets. In this case, the State would take some of the risks for non compliance and unfulfilment. While a centralized scheme could be implemented on this basis, its implementation could take long and be slow, therefore, finding legal ways to allow for the coexistence of different ways to incentivize participation in carbon sequestration supported by third parties could help to promote early action.

4.4 RIGHTS RELATED TO BENEFITS

As previously mentioned, the UN-REDD Program has not yet considered the allocation of benefits and is currently doing the relevant technical analysis. For the few projects related to carbon sequestration, the basis for allocation of benefits in principle will be through the establishment of contracts with landowners.

[29] Ibid.

In the case of the ACP, the benefits for trading the carbon sequestration benefits are expected to go to the ACP authority as earlier explained, as it is also the entity that manages the forests in the Canal. The landowner would receive benefits, as the ACP will establish crops in the land and provide support for them. Moreover, although yet not established, it is expected that cash payments will be provided in the future, though the value is not yet certain.

In cases where private companies are investing in forest management, in general they buy the land and then trade the carbon credits on the voluntary market or get philanthropic support, keeping the benefits. A number of those initiatives have accredited their forests practices under voluntary certification schemes, including the Verified Carbon Standard and CCBS.

The legal framework, for the case of indigenous peoples, provides that they have a right to participate in the economic benefits from their lands. In the case of natural resource exploitation on indigenous territories or those belonging to indigenous peoples, **they have a right to a share of the resulting economic benefits** (Environmental Law, Article 105).

4.5 BENEFIT DISTRIBUTION INSTITUTIONS

As previously stated, ANAM is an autonomous entity and the governing authority in environmental matters. It is also in charge of protecting and preserving natural resources and should therefore be in a good position to coordinate a REDD+ mechanism. Institutionally however, it is represented at the executive level by the MEF and is unable to present legislative proposals in its own right. Furthermore, although a REDD+ team has been set up, it is very limited in terms of budget and resources. It also has a very limited reach in forests in the interior of the country, leading it recently to begin using concessions and similar instruments to delegate some of its forest protection and administration responsibilities for remote protected areas (i.e.: *regente forestal*).

Nevertheless, based on lessons learned at the national level there are various arrangements that could be used to establish a transparent benefit distribution institutions, for example: mixed institutions (private-public partnerships), a national fund, or a trust fund with an experienced entity.

4.6 RECOMMENDATIONS

Clarifying the legal nature of carbon sequestration is a priority, especially because of its effect on how will stakeholders view REDD+ implementation.

It is particularly important to use the NJP processes to begin to incorporate practical and technical aspects of future legal arrangements with landowners/possessors, specifically considering:

- Participation requirements in the REDD+ mechanism;
- Ways of expressing consent;
- Obligations undertaken by the parties;
- Ensuring incentives to emission reductions by forest managers;
- Managers' legal ability to file complaints about illegal felling and clearance by third parties;
- Payment or rate distribution to maintain monitoring information required at the national level;
- Possibility of national or international agreements with third parties by private holders;
- Accountability for non-compliance and consequences;
- Support and training activities;
- Benefit distribution;
- Each party's duties and obligations; and
- Each party's performance guarantee.

Contracts with indigenous territories and collective lands will require special care, and it will be necessary to clarify the free, prior and informed consent process, each party's obligations, monitoring, accountability, support, and training, especially in areas overlapping protected areas.

It would also be relevant to assess whether the current forest exploitation provisions could help reach these objectives and how, as it already is applied to the complex legal context.

A more in-depth analysis is needed on institutional viability and ways of ensuring transparency and on ways of guaranteeting that funds are properly distributed and whether a decentralized or centralized system will be required.

Progress must be made in implementing the government and indigenous peoples' joint environmental agenda to improve the situation in the communities.

Viewing carbon sequestration as an environmental service seems to be an alternative more in line with national legislation but the debates should be directed towards preventing that the discussion be swallowed up by legal definitions of natural resources and forests: eventually the priority is to ensure that benefits reach out to forest managers. A possible alternative would be regulating PES, initially through an ANAM resolution or ideally through a Law or Executive Decree. This would set the ground for PES contracts whose objective would be to regulate the specific land use/management practices to be perform by the landowner/user of the area that would enable the provision of the ecosystem services.

However, seleting the legal and technical aspects to develop will depend- to a great extent- on the definition of the National REDD+ Strategy and will be a means to get to the objectives that the stakeholders will define as key.

5.0 FREE, PRIOR AND INFORMED CONSENT (OR CONSULTATION RESULTING IN BROAD COMMUNITY SUPPORT) (FPIC) IN PANAMA

5.1 BACKGROUND ON FPIC

There is no universally agreed definition of Free, Prior and Informed Consent and some countries, including the United States, understand it as a process of meaningful consultation[30]. This section examines Free, Prior and Informed Consent (or Consultation) (FPIC) in the Panamanian national legal context and in relation to REDD+ particularly. This analysis does not reflect any opinions of the US government on FPIC in Panama or globally.

The consent of indigenous peoples over the use of natural resources in their territories has been the center of many debates and clashes over the past few years in Panama, especially when the State has authorized hydroelectric plants and mining activities that impact indigenous territories without first consulting them.

However, Panama has some of the most advanced legislation in the world in terms of indigenous rights, as the Panamanian Constitution incorporates a very broad recognition and legal framework to protect indigenous peoples, their identity, language, and territorial regime and several pieces of legislation contain provisions on the consultation and participation of indigenous people.

Nevertheless, the main problems lie, on one hand, in the lack of implementation and development of existing norms, and on the other, in the fact that many indigenous territories are still pending official recognition and as a result are not consulted on large-scale projects nor are they able to participate in benefits.

Current legislation does not explicitly address how to implement free, prior and informed consent with communities in the case of various projects. It is essential that progress be made in this regard, especially in light of future REDD+ implementation, the large number of hydroelectric plants already authorized and those pending authorization, and numerous mining exploration requests.

The UN-REDD preparedness program, which is supporting REDD+ readiness in Panama, has adopted guidelines on consultation that should be followed in Panama. Following 2013 COONAPIP's communication claiming that their rights had been violated, the independent review of the program did not

[30] The US recognizes the significance of the United Nations Declaration on the Rights of Indigenous Peoples provisions on FPIC, which it understands to call for a process of meaningful consultation with tribal leaders, but not necesarilly the agreement of those leaders, before the actions addressed in those consultations are taken" (US Department of State, 2010. Announcement of the US support for the UNDRIP [Announcement] http: www.state.gov/r/pa/prs/ps/2010/12/153027.htm)

confirm the violation of rights, but rather highlighted inconsistencies in the participatory components. In 2014 the agreement between ANAM and COONAPIP to adopt a broader Environmental Agenda was achieved after a fruitful dialogue, while the national program has in parallel resumed early consultative dialogues to prepare the ground for a first draft of the early National REDD+ Strategy.

5.2 LEGAL BASIS FOR PARTICIPATION, CONSULTATION, AND CONSENT

The United Nations Rapporteur for Human Rights, James Anaya, recognizes that "the Panamanian legislation on indigenous issues is **undoubtedly among the most advanced in the world in terms of the protection and promotion of the rights of indigenous peoples**."

This is true not only because of the type of international instruments the country has signed, but also because it has made significant recognition of indigenous peoples in the Constitution. While there is no regulation of free, prior and informed consent, there are rules that refer to it, both in relation to collective lands and in relation to access to genetic resources. Furthermore, there are provisions in the environmental, forestry and county regulations that clearly aim to guarantee the rights recognized under the Constitution in relation to indigenous peoples, and they should be interpreted as such.

The following chart refers to the main international, regional, and national regulations regarding the consent and participation of indigenous peoples.

INTERNATIONAL LEGAL FRAMEWORK

Panama is a signatory of the main international treaties on social and economic rights, including:

- The International Pact on Civil and Political Rights,
- The International Pact on Social, Economic, and Cultural Rights,
- The International Convention on the Elimination of All Types of Racial Discrimination.

Panama also voted to adopt the 2007 **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).**

REGIONAL FRAMEWORK

Panama ratified the **American Convention on Human Rights**[31] **and accepted the jurisdiction of the Inter-American Court of Human Rights**.[32]

BILATERAL AGREEMENTS AND IMPLEMENTATION OF UN-REDD PROGRAM AND FCPF STANDARDS

Panama has used the following guidelines:

- The "Guidelines on Stakeholder Engagement in REDD+ Readiness With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities," April 2012
- "Guidelines on Free, Prior, and Informed Consent," January 2013.

FCPF:

If FCPF starts its implementation in Panama, FCPF will likely demand compliance with World Bank safeguards, which contain a different definition of FPIC than UNDRIP defining it as "free prior and informed consultation resulting in broad community support" (World Bank Operational Policy 4.10 on Indigenous Peoples). However, given that Panama's national legislation to implement FPIC has complementary and indeed stronger protection language, national legislation will apply.

[31] Panama is a state party to the International Declaration on Human Rights, June 22, 1978.

[32] This recognition took place on May 9th, 1990.

NATIONAL LEGAL FRAMEWORK	
REGULATION	**CONTENT**
National Constitution (CN)	The human rights affirmed in international instruments are covered in the national legal system in the Constitutional provisions (CN, Article 17, which establishes that rights defined in the Constitution do not exclude other fundamental rights). The Constitution contains several important provisions that protect the rights of indigenous people with regard to their identity (CN, Article 90), language (Article 88), education (Article 108), autonomy and land (Articles 124, 126 and 127), and also affirms that the State "**recognizes and respects the ethnic identity of the indigenous communities**" and that it will promote programs to develop their culture and material, social, and spiritual values (Article 90).
ED 25- 2009, which regulates access to genetic resources	FPIC is defined as "authorization granted by the provider of a genetic and/or biological[33] resource or of traditional knowledge to the applicant to carry out a determined activity that implies access and/or use of said resources and/or knowledge" (Article 3) - The FPIC contract is considered as an **accessory contract** to the contract for access to genetic and/or biological resources (Article 24). - It is not only applicable to indigenous communities, but also to **any provider** of genetic and biological resources. - It is an agreement or contract signed by the owner of the resource or space where the resource is located. - The person (natural or juridical) or local community which holds **property rights** of the good are "providers." - FPIC can also be granted by the **possessor** of said resource or space. In **indigenous or local communities,** FPIC can be granted by the community representative, as long as a certificate of authority is presented (Article 25), without undermining any corresponding territorial legislation defining who can provide FPIC.
REGULATIONS ON PARTICIPATION AND CONSULTATION OF INDIGENOUS COMMUNITIES	
Law 72-2008 on Collective Lands, Article 14.	Within collective lands, the government and private third parties are required to coordinate with traditional authorities "to ensure free, prior and informed consent" of the people before developing projects "in their areas." However, it should be noted that this was framed in the law on Collective Lands, which from a legal perspective does not cover Comarcas.
General Environmental Law	The section devoted to Indigenous Territories and Peoples stipulates, among other provisions, that "the State **shall respect, preserve and maintain knowledge, innovations and practices** of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity (...), and encourage the equitable sharing of **benefits derived"** (Article 97).

[33] Applying the definition provided by the Convention on Biological Diversity, FPIC is required to access and utilize any resource, with the exception of the human species.

	It provides for the **participation of Indigenous Territories and peoples in consultations** for activities, works or projects to be developed **within the territory of indigenous communities**. The consultations are aimed at **establishing agreements** with community representatives on their rights and customs, as well as obtaining compensatory benefits for the use of their resources, knowledge or land (Article 103).
National Environmental Authority Resolution AG-0366-2005, 12 July 2005	**Concessions in protected areas** Project development on State lands located in protected areas, in practice, is done through the granting of an administration concession for the protected area. This method has been used to formalize project development – generally hydroelectric plants. At the same time, some of these areas overlap with indigenous territories or communities. The rules governing the procedure for granting administration concessions for protected areas establish that administration **concessions that partially or fully cover indigenous territories or regions "should be coordinated and agreed upon with the relevant indigenous authorities..."**
Forestry Law (1-1994)	This law provides for the participation of indigenous peoples in forestry concessions, establishing the need for authorization by the relevant Indigenous Congress when forest concessions are granted within an indigenous territory (Article 32).

Previously the Environmental Law included a requirement of **indigenous community consent for the exploitation of resources located in indigenous communities or lands, through authorization by the competent authority** (ex-Article 101) and a right of indigenous peoples and territories in relation to the use, management and sustainable traditional harvesting of renewable natural resources located within the indigenous territories and reservations created by law (ex-Article 98). These requirements were repealed[34], and now, **according the regulation, only consultation is mandatory, but the authorization of the communities is no longer strictly necessary.**

While this elimination was prejudicial to the understanding of the need for binding consent by indigenous peoples, Huertas recalls that it is essential to remember the principle of constitutional interpretation that doctrine refers to the **"principle of Constitutional unity**." Following this principle, when interpreting the various provisions relating to consent, laws are not interpreted in isolation but in an integral manner.

Thus, Article 123 of the Constitution states that land collectively owned by indigenous communities may not be subject to private appropriation, and Article 127 that "the State shall guarantee the necessary land and collective ownership of them to indigenous communities **to achieve their economic and social well-being.**" On this basis, Huertas (Huertas, 2014) argues that indigenous lands **"cannot be subject to any concessions to third parties without the prior, free and informed consent of the holders of the relevant collective land**. This is because the constitutional principles seek the preservation and continuity of indigenous culture and this principle would be violated if the State grants concessions within indigenous lands that undermine the very principle by which they are recognized."

However, this interpretation and the implementation of Article 14 in Law 72/2008 foreseeing the implementation of FPIC is not straightforward. For the latter, the norm specifically concerns collective lands but not necessarily Comarcas, which have their own law of creation. In any case, FPIC has so far not been regulated in the country but, for the case of REDD+, the UN-REDD guidelines, including on FPIC would still apply.

[34] Law 18, 24 January 2003

Indigenous territorial legislation also contains provisions on authorizing the use and exploitation of forest resources that should be taken into consideration when implementing projects related to forests. The following table contains some examples.

Regulation	Participation and Consent Related to Natural Resources
Emberá Wounaan Territorial Legislation. DE 84-1999	**The functions of the Department of Natural Resources (DIRENA) include,** in coordination with the Local Congresses, ensuring the protection of natural resources so that they are not exploited or utilized **without due consent of the traditional and public agencies and authorities,** receiving all **applications** involving exploration and exploitation of renewable natural resources and soil resources for their **due approval by the traditional authorities and entities, coordinating with ANAM** on protection plans for renewable natural resources within the territory (Article 96). **ANAM, together with DIRENA will ensure the conservation and rational use of renewable natural resources.** Resource will be exploited according to the following **procedure**. The community concerned shall request, through the Local Congress, the opinion of the Regional Chief, who shall rely on DIRENA's expertise to issue an opinion on the feasibility of the project. This will eventually be forwarded to the General Chief, who will authorize the required procedures with ANAM (Article 98).
Guna Yala Territory Fundamental Guna Law (**not ratified)**	The Fundamental Law stipulates that: **any type of project the State wishes to implement in Gunayala shall take into account the principle of free, prior, and informed consent** of the Guna and Onmaggeddummad Sunmaggaled people, who have the authority to reject, modify, or approve the proposed project (Article 97).
Ngabe Bugle Territory **Law 10-1997 (updated by** Law 11-2012, **which establishes a special regime for the protection of mineral, hydro, and environmental resources on the Ngabe-Bugle territory)**	The Ngabe-Bugle Territory, through the relevant agencies, will plan and promote **holistic sustainable development projects** in the communities, with appropriate interagency coordination (Article 43). ANAM, **together with the effective participation of the territorial authorities, will ensure the conservation and rational use of the renewable natural resources** found within the Territory. There will no longer be any "industrial exploitation of resources" without the prior consent of **the Territorial authorities** (Article 50). The powers of the Ngabe-Bugle General Congress include **submitting all mineral exploration and exploitation project to a referendum** (Article 57). **Law 11-2012:** The Law expressly **forbids the granting of concessions within the Ngabe-Bugle Territory for metallic mineral exploration, exploitation, or extraction,** with very few exceptions, **and cancels all previously granted concessions** (Articles 2, 3, and 4) It establishes a different regime for hydroelectric projects and stipulates that **future projects "must be approved in a plenary session of the General, Regional, or Local Congress"** and that they **"later be submitted for referendum within the relevant territorial, regional, or local district"** (Article 6). According to the law, a minimum of 5% of the benefits derived from said projects will be distributed to the Ngabe-Bugle community (Article 7).

There are also other relevant regulations for participation in environmental matters, although they do not specifically refer to free, prior, and informed consent and on the whole need further development to be implemented.

OTHER PARTICIPATION REGULATIONS

In general, these regulations differentiate between citizen participation and indigenous community participation, as the latter is carried out through recognized authorities.

Regulation	Participation and Consent Related to Natural Resources
Law 6-2002, on Transparency in Public Administration	- The State must allow **citizen participation in all acts of public administration that can affect the interests and rights** of groups of citizens (Article 24) including actions such as building infrastructure, appraisals, zoning, and setting rates and fees for services, "among others." - It defines four **types of participation:** public consultation, public hearings, forums or workshops, and direct participation in institutions. - The way in which participatory processes should be carried out has **not been regulated,** a necessary step to implement the law and provide legal security since the Administrative Procedure Law prohibits the establishment of requirements or procedures that have not been set out in legal provisions. - Outcomes of participatory processes are **not binding** on decision-making.
General Environmental Law	Channels participation and consultation through: **- Environmental Consultative Committees**[35] created as ANAM consultation bodies at national, provincial, territorial, and district levels, with participation from civil society and local or territorial authorities. By administrative resolution ANAM will decide which environmental issues should be subject to public consideration. The Committees will then meet to give their opinions, recommendations, and proposals (Articles 8-21). More than thirteen years after its creation, ANAM still has not issued a resolution on which topics it will submit for public consultation, so this mechanism, albeit non-binding, has yet to be used. – Participation is required for **environmental impact assessments** for activities, works, or public or private projects which, given their nature, characteristics, effects, location, or resources, could **generate an environmental risk.** There are different types of assessments, depending on the level risk involved, and the citizen participation requirements are also different for each category. However, the results of this **participatory process are not binding on the decision of the entity** (Executive Decree 123, 14 August 2009).

Panama has a long way to go in the area of citizen participation. Although there are scattered regulatory procedures, most of them are not properly regulated and/or participation is not binding on the final decision.

5.3 NATIONAL COORDINATION FOR IMPLEMENTATION

CONFLICTS RELATED TO AUTHORIZATION OF HYDROELECTRIC AND MINING PROJECTS

The development of large investment projects in or affecting indigenous territories in Panama has been the subject of numerous allegations of violations of the rights of indigenous peoples, especially in recent years. Most of these projects are hydroelectric projects, but there have been conflicts over extractive activities such as mining. This had led to demonstrations and violence and even a visit by the United Nations Special Rapporteur on Human Rights.[36]

[35] Regulated by Executive Decree 57, March 16, 2000

[36] The declaration made by the UN Special Rapporteur on the Rights of Indigenous Peoples at the end of his official visit to Panama (July 26, 2013), available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41_en.pdf , pagina 25. The Rapporteur submitted the advanced version of his report to the Human Rights Council in May 2014, see: http://www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.27.52.Add.1-MissionPanama_AUV.pdf, accessed May 13, 2014.

The Rapporteur stated that, despite having an advanced legal framework for the rights of indigenous peoples, specifically based on their **territorial system**, which provides significant protection for indigenous peoples in Panama, the country is experiencing "**a number of problems related to the implementation and guarantee of the rights of indigenous peoples**, especially with regard to their lands and natural resources, large-scale investment projects, self-government and participation, and economic and social rights, including economic development, education and health." [37]

In relation to hydropower or mining authorizations, indigenous peoples affected by these projects have alleged **irregularities in the processes by which the authorizations for the construction of the plants are obtained or in the processes by which agreements are reached, as well as the inadequate distribution of benefits**. In general, these projects are being developed outside the boundaries of indigenous territories, but are affecting land recognized or claimed by indigenous peoples.

Hydroelectric Project	Situation (according to the UN Special Rapporteur's report)
Barro Blanco Plant	Most of the conflicts that have emerged are not related to specific impacts on indigenous territories, but rather a lack of consultation. The report documents that "**there was no proper consultation with the affected indigenous peoples** and the direct and indirect impacts have not been clearly explained or understood, but these direct impacts certainly can affect the community and must be mitigated properly."[38]
Bayano Plant	This plant was built in the late 1960s and many indigenous families were displaced when the land on which they lived was flooded. Before relocating them, the government **offered financial compensation and new land with full title.** However, the communities argue that their land to which they were moved has yet to be legally recognized and that no compensation was ever made. In 2013, the Inter-American Commission on Human Rights found **"a continued violation of the right to collective property"** and forwarded the case to the Inter-American Court. The case is still pending.
Chan 75 Plant	State representatives told the Special Rapporteur during his visit that **they made a mistake leaving the company in charge of the consultation process** at the beginning of the project. The representatives of affected indigenous communities also complained that the consultation process was carried out through negotiations with individual families and **not with their representatives of through traditional forms of decision-making.**

With regard specifically to the **right of consultation and free, prior, and informed consent, as understood in the Panamanian context,** Rapporteur Anaya pointed out that the communities affected by the Chan 75 project **were not consulted** to obtain their consent prior to the creation of the Palo Seco Protective Forest, the protected area in which the hydroelectric plant is located,[39] nor for the Chan 75 hydroelectric plant, and that "both decisions **had a significant impact on the lives of these communities.**"[40]

The Rapporteur points out that, although both the State and the company report **having held consultations, they were not held specifically and directly with these communities,** as established in the UNDRIP, on the basis that the project is located outside the territories boundaries.[41] The report recommends that, as a corrective measure, the State hold **a new dialogue process,** so that the **affected**

[37] The declaration made by the UN Special Rapporteur on the Rights of Indigenous Peoples at the end of his official visit to Panama (July, 26, 2013), supra, note 28.

[38] Expert report on the Barro Blanco Hydroelectric Plant, Results of the Rural Participation Study, September, 2013, paragraph 100.

[39] Created by Executive Decree No. 25, Sept, 28, 1983.

[40] Report made by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya. Observations on the Charco la Pava community and other communities affected by the Chan 75 hydroelectric project (Panamá, 2009) A/HRC/12/34/Add.5, parargraph 17, page 9

[41] Íbid, paragraphs 17-25, pages 9-12

communities can have the opportunity of freely granting their consent.[42] The Rapporteur also highlighted the State's position of **not recognizing the affected communities as the owners of the land and natural resources they currently occupy and use within the protected area,** which has led the State to treat the project as **located on State land,** thereby affecting the entire consultation process with the communities and their right to participate in the benefits generated by the project.[43]

"Recent experiences with hydroelectric projects in Panama illustrate the consequences of the lack of a suitable framework for regulating consultation processes with affected indigenous communities" (Anaya, 2014).

Regarding the creation of the Palo Seco protected area, it is important to consider the interaction between the the recent ruling in the Panama Bay case (which deemed valid the creation of protected areas despite a lack of a prior public consultation process in the absence of regulation on how to carry out consultations) and the clear need to consult with indigenous peoples on the creation of protected areas within their territories (Supreme Court Ruling on 23 December 2013).

FPIC AND THE UN-REDD PROGRAM

As described in the first section of this report, the participation and engagement of indigenous peoples in the implementation of the UN-REDD Program has generated some disagreement and certain difficulties, which have recently been addressed through dialogue between COONAPIP and ANAM. NJP identified COONAPIP as the representative body of indigenous people on the basis of the criteria set out in the UN-REDD Program Regulations and the manifestations of the indigenous peoples themselves. During the program document validation process, COONAPIP presented **19 different points on their priorities for REDD+ implementation** including an **operating framework for REDD, and the Balu Wala Methodology** (see text box below). COONAPIP hoped that, as part of the UN-REDD Program implementation process, measures would be taken to **ratify ILO Convention 169**. The resulting disagreements were related to the following, among other things:

- A **lack of clarity as to whether COONAPIP's role** is more related to coordination and communication or if they would be directly in charge of the activities within the territories.
- **The possibility of channeling funds to COONAPIP,** since they lack formal legal status and cannot receive foreign cooperation public funds (UN-REDD Panama, Mid-Term Evaluation, 2013).
- **Thematic and budgetary scope of the activities** covered by indigenous participation in REDD+, since COONAPIP had prepared a Strategic Plan for Political Advocacy (PEIP) containing a detailed proposal and covering broad subjects related to the governance of territories and natural resources.

As a key element of the agreement, the Mid-Term Evaluation of the UN-REDD Program found that **the main issues under discussion** have been related to two aspects:

1. The need to **ensure** that there are "formal or institutionalized **mechanisms** to guarantee the **full and effective participation of indigenous people**;" and
2. The "**adequately precise [definition] of the roles, responsibilities, and competencies** of the different UN agencies and Panamanian government authorities **with regard to the participation and priorities of indigenous people** in the Panamanian context."

The independent evaluation of the program highlighted two fundamental aspects related to the need **to clarify participation mechanisms** to engage relevant communities in REDD+:

- Firstly, REDD is a **mechanism under development** and when the Program was first implemented, many of the current guidelines and international agreements had not yet been developed. As a result,

[42] Íbid, paragraphs 28-30, page 14

[43] Íbid, paragraphs 32-42. pages 15-19

the process requires constant **updates and readjustments,** in particular to adapt to current UN-REDD guidelines that apply to FPIC; and

- Although there are **guidelines,** the real challenge lies in understanding how they should be **applied** to undertake consultation and participation process with communities.

Other participation aspects highlighted by the evaluation are summarized in Chapter 2 of this report. Subsequently, **ANAM and COONAPIP** reformulated the UN-REDD Program results framework. In March 2014, **an agreement was signed between COONAPIP, traditional chiefs and authorities, and ANAM** to develop an **environmental agenda for indigenous people for the next five years.** Among other elements, the agenda contains opportunities for cooperation to strengthen COONAPIP, improve the governance of natural resources, address consultation under the REDD+ framework, strengthen the Indigenous Congresses, train indigenous professionals and scientists, clarify areas of overlapping indigenous territories, and establish some legal certainty. **This process also allowed for the resumption of the REDD+ program in Panama**.

Following are some of the points identified during the NJP evaluation relating to **legitimacy, representativeness, and institutional roles** vis-a-vis REDD+ implementation:

- **COONAPIP will continue to support** the coordination of UN-REDD Program implementation activities.

- Although COONAPIP is comprised of the authorities of all eleven indigenous territories in Panama, **each group has a right to self-determination.** This implies the need to define with great precision and delicacy the roles and competencies between COONAPIP as the national body and the eleven authorities as territorial bodies. This is one of the reasons why the agreement in March 2014 was signed with the **highest authorities of the indigenous peoples** and also why the workshops being carried out as part of the UN-REDD Program consultation process are aimed at and connected with these authorities, although they are also coordinated and supported by COONAPIP.

- The right to self-determination also means that **each indigenous group also has its own internal consultation and decision-making procedures,** which must be respected.

- The **government, through its competent authority, in this case ANAM, should take the lead in coordinating and implementing activities, not only as the REDD+ preparedness coordinator in the long term, but also as the entity in charge of guaranteeing the realization of recognized rights.**

- **Agreements to implement programs or environmental agendas have to be negotiated and agreed upon by the national government,** since no intergovernmental program or any other entity can guarantee the government's commitment regarding the realization of certain long-term goals.

- **In this sense, programs or institutions can support, assist, or contribute to the processes, but in no event can they overtake the national government's leadership role in implementing REDD+.**

The Independent Mid-Term Evaluation found that, **with regard to obtaining consent, the Program should:**

1. Define **diversified consultation, participation, and capacity building strategies,** based on the different needs and demands of the actors participating in the REDD+ Panama processes;
2. Adopt a **communication protocol** to make sure that NJP consultation and participation dialogue takes place directly between **duly authorized representatives** of the NJP and the Panamian organizations with REDD+ roles and mandates;
3. Recognize that "**UN-REDD guidelines served as a safeguard to guarantee consultation and initial validation with indigenous peoples, but did not lead to adequate quality control of the program design,** nor to the definition of roles and responsibilities of the different agencies, State bodies, indigenous peoples, and civil society." The program should, from the outset, **conceptualize interrelated strategies for consultation, participation, communication and capacity building** with all stakeholders; and
4. View participation and consultation aspects as **permanent processes through institutionalized fora** in addition to **consultations with** relevant sectors on the **national strategy, by considering internal consultations among indigenous peoples** to address their needs and consolidate positions; and supporting **specific consultations on legal or administrative measure that could affect indigenous peoples.**

In the absence of legislation or specific agreements as to how consultation and participation should be undertaken, it is clear that **the existence of guidelines and recommendations for participation per se have not easily translated into specific aspects of implementation**. It is essential to identify processes and mechanisms to advance participation and consultation in each national context, preferably before activities start.

As described in Chapter 2 of this report, the Public Participation Plan launched in the context of the UN-REDD Program is based on guidelines to establish a participatory process to draft a National REDD+ Strategy that reflects the interests of the various stakeholders, particularly indigenous peoples. The aim of incorporating stakeholder views in the national strategy is to build a common vision, while allowing actors to reflect their interests and concerns.

The FPIC process will be addressed at a later stage when the REDD+ scheme, and therefore the precise level of community affectation, are clearer, allowing communities to make informed decisions on whether or not to participate in a specific REDD+ proposal. One positive aspect of this approach is that it allows different visions and concerns to be incorporated at an early stage so that the mechanism can respond to the needs of the different actors, and not vice-versa. In this sense, and in accordance with international regulations, the ultimate responsibility for ensuring its implementation lies with the State.

KNOWLEDGE ABOUT RIGHTS

The various indigenous peoples seem to fall under different contexts with regard to land tenure, organization of authorities, and autonomy. As mentioned above, there is evidence of difficulties in implementing the legal framework needed to ensure their rights, for example, in consultation processes for large-scale projects affecting their territories. However, the growing awareness of indigenous peoples in Panama of their rights has helped indigenous peoples to achieve quite a few victories, as reflected in the territorial system and national legislation, as well as with claims filed before international bodies regarding a lack of prior consultation for major projects. They have also been major drivers of the recognition of indigenous peoples at the international level. However, knowledge is still limited to certain sectors and peoples and therefore further training and knowledge dissemination are needed. As mentioned above, there are still relevant challenges to be faced in implementing regulations.

The territorial regime and self-governance system has allowed traditional authorities from each indigenous people's territory to maintain and develop their own consent and decision-making processes, which differ from people to people and are known and valued by them. Projects should adequately consider the procedures of each community.

For example, the Guna Yala territory has a high level of autonomy and a complex government system organized according to their founding law, as well as their "own" consent system for projects and other initiatives. Most of the requests and social initiatives presented to the communities in this territory have been subject to debate and consultation in the Guna General Congress, the highest authority. However, this Congress, as well as the 49 communities making up the territory, still do not have specific FPIC guidelines. So far, the Anmar Igar (Guna Law) has worked well to identify any possible irregularities and according to community members, the internal regulations in each community also are effective.[44]

The Guna Yala people took their principles and visions to the UN-REDD Program negotiating table and have also requested that the Program document incorporate traditional principles.

"Balu Wala" Methodology

The Guna-proposed framework of principles for REDD+ implementation is based on the Balu Wala methodology, which incorporates the following principles:

1. **Communitarianism:** a model of social, collective community life that displays a cohesion between its members that are involved as important actors in the the different facets of communal life.
2. **Timekeeping:** a respectful relationship with the spiritual guides that are the living libraries or record-keepers of the communities.
3. **Balance and harmony between nature and human beings**.
4. **Consensus:** a basic principle in collective decision-making which contribut to "living well" or community life. All activities and outcomes will be approved by democratic, respectful, and traditional consensus, without impositions of any kind.
5. **Dialogue:** another basic principle which allows social harmony and exchange of information between community members and different sectors. Dialogue will be expressed through surveys, interviews, and consultation with leaders, authorities, and spiritual guides, among others.
6. **Respect:** consultation processes will be based on respect for the inhabitants, their belief system, government, and all facets of their community life, territories and traditional beliefs.
7. **Indigenous law:** the consultation will be based on the right held by all indigenous communities, authorities, and members to not only have access to information, but to participate and take decisions at all stages of the work.

[44] Rogeliano Solis, Conservation International, Case Study, Free Prior And Informed Consent In Panama: The Guna Case In The Context Of Its Autonomy, 2013, available at: http://www.conservation.org/about/centers_programs/itpp/Documents/FPIC-Documents/CI_FPIC-Case-Study_Panama.pdf, accessed January 30, 2014.

5.4 RECOMMENDATIONS

GENERAL

- Promote measures and processes that can contribute to build channels for ongoing dialogue with indigenous representative and the government to address concerns in a peaceful and constructive manner that last beyond the UN-REDD programme.
- Take advantage of the current UN-REDD Program early dialogues process ("active listening") to build channels that will continue to apply common values and attitudes to future dialogue.
- Develop, in a participatory fashion, the basis for a law on FPIC or consultation as understood in the Panamanian context between indigenous peoples and the government, or protocols and guidelines that favor and facilitate follow up on the processes needed for projects and activities in indigenous territories and collective lands.

IN THE REDD+ CONTEXT

- Strengthen coordination and consultation with indigenous authorities regarding legal, political, and administrative decisions affecting them, and specifically make sure that the National Strategy is clear on how and under what circumstances REDD+ FPIC, according to the Panamanian legal context, will be carried out.
- Develop consultation and participation plans detailing the necessary FPIC steps in specific communities, according to the Panamanian context. In this sense, experiences preparing biocultural protocols could be taken into account, such as the one developed by and for the Honduran Miskitu indigenous people (MASTA, El derecho al consentimiento libre, previo e informado en nuestro territorio de La Muskitia Hondureña, October 2012, see: https://cmsdata.iucn.org/downloads/protocolo_bio_cultural_miskitu.pdf, pages 41 y ss)
- The development of REDD+ complaints or claim mechanisms could be a way to channel difficulties and capture them early on.
- Continue trying to simplify and encourage the participation of indigenous institutions, such as COONAPIP, in spite of their lack of legal status.

RECOMMENDATIONS TO OTHER REDD PREPAREDNESS PROGRAMS

- Define diverse strategies for consultation, communication, participation and training early on and in a participatory manner.

5.0 CONCLUSIONS

The success of Panama's approach to REDD+ will be deeply linked to adequately addressing land and resource tenure. Ownership, possession and occupation of land and forests has strong influence in determining which stakeholders can participate in REDD+, how they can negotiate, what benefits they may be entitled to, and what responsibilities they will have to carry out. The temporary hold on UN-REDD program support in 2013 due to misunderstandings between the Panama National Coordinating Agency for Indigenous Peoples (COONAPIP) and the National Environmental Authority (ANAM) brought Panama's REDD+ activities to the center of global REDD+ discussions. While the program has resumed on a cautious but optimistic path, the need to critically evaluate the role of land and resource rights remains a top priority. This TGCC Resource Tenure and Sustainable Landscape Assessment considers current barriers and opportunities to Panama's REDD+ program through:

- a tenure-based stakeholder analysis;
- an assessment of tenure within current policies;
- an analysis of rights related to benefits a Panamanian context; and
- an assessment based on Panama's legal framework for consultation and consent.

The analysis focuses on the country as a whole, as specific implementation sites for REDD+ activities have not yet been decided. Key areas of forest cover, and where forests have been threatened, include, the Darien, watersheds on the Costa Rican border, the Panama Canal watershed, the Caribbean corridor and the western watersheds, as well as the Comarca Gnäbe-Buglé.

TENURE AND REDD+ STAKEHOLDERS

There are multiple stakeholders to consider for REDD+ in Panama, including indigenous peoples, Afro-descendent populations, rural farmers and land owners, and the State.

While indigenous peoples have a high profile in the REDD+ discussions in Panama, there is a significant lack of clarity on the tenure of part of their territories and ambiguities remain concerning their rights to forests. Indigenous lands are held both as indigenous territories named Comarcas, each one created by law and with remarkable autonomy, as well as Collective Lands, with basis on Law 72 of 2008. Under this law, there are numerous indigenous peoples' claims that have not yet been addressed by the government. Rural smallholders face particular challenges in that many are migrants over recent decades and have been portrayed in some cases as the drivers of deforestation. In many cases, rural smallholders have tenuous rights of possession over land and their current use of the land can be affected by REDD+ implementation. Afro-descendent populations of the Darien may also face risks, as most lack ownership or clear rights over their land. There is also a group of large landowners and cattle ranchers that have large landholdings in these forest transition areas who must be engaged. In the past neither smallholders nor Afro-descendent populations had been engaged deeply in the REDD+ preparatory process, although currently the NJP led by UN-REDD has included consultations with these actors and a participatory strategy is being sketched. The State is in a powerful position as the owner of all non-owned lands, including land that has long-term "possessors." Particularly controversial is the State's ownership over all forested natural resources, including on private and Comarcas' land.

Some other stakeholders have yet to become active in the REDD+ process including some ministries, local authorities and representatives from the hydroelectric and mining sectors, and their engagement needs to be further factored in, together with forest protection into a coherent National Development Plan to harmonize

competing uses of the land. Another concern is ensuring that upcoming participatory processes integrate the most vulnerable stakeholders like indigenous women and youth.

TENURE AND FOREST POLICY

There are several laws governing natural resource and forest tenure that are also pertinent to REDD+ implementation. However, not all actors interpret these regulations in the same way, particularly in relation to their property and tenure. Additionally, the legal framework relating to land tenure contains a number of perverse incentives that may encourage deforestation, such as the demonstration of land ownership by logging.

Forestry governance in Panama is quite complex, with high levels of illegal logging, few productive activities favoring reforestation to alleviate pressure on forests, and diverse conflicts related to the forest. This is exacerbated by the lack of legal certainty regarding land tenure, particularly in relation to forested areas. The legal framework, includes private property, collective property, special indigenous territories (Comarcas), and private and public protected areas, some of which overlap with indigenous territories. The government has made several efforts to improve the land tenure situation in recent years, but there are still a number of challenges to be addressed, such as clear demarcation of protected areas and indigenous territories, and resolution of claims for indigenous collective lands.

National incentive programs to encourage forest protection or reforestation exist but are barely implemented. Indeed, there are policy incentives that actively promote conversion of forests to other uses. For instance, according to the Constitution, the State will not allow the existence of uncultivated, unproductive or idle land, and must encourage maximum productivity and fair distribution of all land benefits (Article 123). Additionally, given the role that "possession" plays in demonstrating tenure to obtain ownership of land, conversion of forested land into crops or pasture has been generally considered a step toward obtaining title. REDD+ incentive programs must recognize the important role that these possessors play in forest management and not just develop incentive programs aimed at "owners." Such measures should be analyzed in depth to strike a balance between encouraging participation and avoiding creating perverse incentives.

TENURE AND CARBON RIGHTS

Carbon rights are not clearly established in the Panamanian legal framework. However, environmental and forestry policies refer to carbon sequestering as an environmental service. The national legal framework provides only that the State "will establish the mechanisms to gather financial and economic resources (for carbon sequestration) through programs to be jointly implemented and internationally agreed" (Article 79).

Different interpretations on how carbon sequestration and rights should be considered prevail, also influenced by the current debate on the ownership of forest and natural resources. Some consider carbon a public good; while others consider it as the "fruits" generated from the land, which would belong to the landowner. This analysis is complicated by the Panamanian literal interpretation that forest resources do not necessarily belong to the owner/usufructuary of the land but rather to the State, regardless of who owns or has usufruct rights to the land.

If the benefits related to carbon sequestration are considered as public or belonging to the State, the State could grant permits to exploit or benefit from the environmental services of carbon sequestration to the owner of the land or usufructuary, as a means to enable forest dwellers and land owners to sign agreements with third parties (universities, enterprises or international buyers) to receive a compensation for the carbon sequestered. This would ensure that the national authority is aware of the carbon sequestration initiatives taking place in the country for monitoring and accountability purposes.

But other alternatives can be developed, including the possibility of establishing contracts with the object of carrying out certain practices or uses of the land, which are assumed to provide an environmental service of carbon sequestration, such as forest conservation or enhancement. In this case, the "buyer" (State or a third party) takes the risk that a certain amount of carbon sequestered would be produced.

Regardless of the interpretation and solution to be undertaken, the legal framework, for the case of indigenous peoples, provides that they have a right to participate in the economic benefits resulting from their lands. In the case of natural resource exploitation on indigenous territories or those belonging to indigenous peoples, they have a right to a share of the resulting economic benefits (Environmental Law, Article 105). In a constructive manner, the focus towards REDD+ in the NJP has been placed on focusing "on the national program's work on ensuring that the potential REDD+ benefits reach communities," rather than deepening divides on visions related to natural resources ownership (NJP Mid-term review report).

The REDD+ benefit mechanism modalities across different tenure regimes will have a substantial influence on the legal instruments used to make it viable. These tenure regimes include, but are not limited to, usufructs, ecological easements, trusts, and private reserve programs. There is presently a lack of clarity around potential benefits, liabilities and timeframes that different stakeholders may face. How non-compliance will be managed should be carefully assessed, to avoid serious impact on the livelihoods of low-income people.

Assuming that the national government has the right to transact REDD+ credits, an initial pragmatic approach may focus on ensuring that benefits and responsibilities are distributed fairly and equitably between forest managers and the central monitoring mechanism.

TENURE AND CONSULTATION

The consent of indigenous peoples over the use of natural resources in their territories has been the center of many debates and clashes over the past few years in Panama, especially when the State has authorized hydroelectric plants and mining activities that impact indigenous territories without previous consultation.

However, Panama has one of the most advanced legislation in terms of indigenous rights, as the Panamanian Constitution incorporates a very broad recognition and legal framework to protect indigenous peoples, their identity, language, and territorial regime and several pieces of legislation contain provisions on the consultation and participation of indigenous people.

Nevertheless, the main problems lie, on one hand, in the lack of implementation of existing norms and their development, and on the other, in the fact that many indigenous territories are still pending official recognition and as a result their inhabitants are not consulted on large-scale projects nor are they able to participate in the benefits.

Current legislation does not explicitly address how to implement free, prior and informed consent, under Panamanian law and UN-REDD guideines, with communities in the case of various projects. It is essential that progress be made in this regard, especially in light of future REDD+ implementation, the large number of hydroelectric plants already authorized and those pending authorization, and numerous mining exploration requests.

The UN-REDD preparedness program, which is supporting REDD+ readiness in Panama, has adopted guidelines on consultation that should be followed in Panama. The Public Participation Plan that it has recently launched aims at establishing a participatory process to draft a National REDD+ Strategy that reflects the interests of the various stakeholders, particularly indigenous peoples. The aim of incorporating stakeholder views in the national strategy is to build a common vision, while allowing actors to reflect their interests and concerns.

The FPIC process will be addressed at a later stage when the REDD+ scheme, and therefore the precise level of community affectation, are clearer, allowing communities to make informed decisions on whether or not to participate in a specific REDD+ proposal. One positive aspect of this approach is that it allows different visions and concerns to be incorporated at an early stage so that the mechanism can respond to the needs of the different actors, and not vice-versa. In this sense, and in accordance with international regulations, the ultimate responsibility for ensuring its implementation lies with the State.

CONCLUSION

The importance of addressing the challenges or recommendations described above is not limited to REDD+, or contingent on future forest carbon financing. Clarifying these land and resource tenure ambiguities and overlaps will encourage investment, reduce conflict and improve land management in Panama's rural lands. Some of these options are "easy wins," while others may reflect a longer-term political commitment, investment, and trust-building between government and rural communities. The tenure reforms needed to successfully implement REDD+ in Panama can be done incrementally and should be a part of the continued process to build trust among the wide range of stakeholders.

ANNEX

FOREST COVER AND LAND USE IN PANAMA, 2012

INDIGENOUS TERRITORIES AND THEIR RESPECTIVE LEGISLATION

Peoples	Indigenous Territory	Established
Guna	*Guna Yala*	Law 2 dated 16 September 1938; Law 16 dated 19 February 1953 (GO #12042 dated 7 April 1953); Law 99 dated 23 December 1998 (to change the name to *Kuna Yala*). Lacks charter legislation approved by decree, but a draft bill and statutes are pending approval.
Guna	*Wargandi*	Law 34 dated 25 July 2000 (GO # 24106 dated 28 July 2000); charter legislation was ratified by means of Executive Decree 414 dated 22 October 2008 (GO # 26165 dated 14 November 2008)
Guna	*Madungandi*	The *Kuna de Madungandí* indigenous territory (Law 24 dated 12 January 1996) was established (GOPA #22951 dated 15 January 1996); charter legislation ratified by Executive Decree # 228 dated 3 December 1998 (GO # 23687 dated 8 December 1998)
Emberá-Wounaan	*Emberá Wounaan in Darien*	Law 22 dated 8 November 1983 to establish the Embera Indigenous Territory in Darien (GO # 1997 dated 17 January 1984) and Executive Decree # 84 dated 9 April 1999 to adopt the administrative charter for the Emberá-Wounaan Indigenous Territory in Darien (GO # 23,776 dated 16 April 1999).
Ngabe-Buglé	*Ngabe-Buglé*	Law 10 dated 7 March 1997 (GO # 23242 dated 11 March 1997); charter legislation ratified by Executive Decree # 194 dated 25 August 1999 (GO #23882 dated 9 September 1999).

REQUIREMENTS FOR THE USE OF FOREST RESOURCES FROM STATE FORESTRY ASSETS

USE OF NATURAL FORESTS WITHIN STATE FORESTRY ASSETS

(Article 27, L 1/94)

- Forest registration record (Article 8, L1/94)
- Petition application, form, national identify card, certificate of tax liabilities (Article 2, Res. JD 05-98)
- Inventory, reforestation plans and forestry management plans (Article 11, L.1/94)
- Annual payment for land use rights (except on private lands) (Article 34, L1/94)
- Capacity fees by cubic meter of authorized lumber (Article 40, L1/94)
- Forest management: ANAM is regulatory body (authorizes, oversees) (Article13 L1/94)

TYPES OF PERMITS AND CONCESSIONS	• **Within indigenous territories, reserves and indigenous communities**	• Community Permits (Article 44 L.1/94) to meet community needs. ANAM authorization with local Congress: ▪ less than 1,000 hectares: community certification, request, project, Congressional authorization, map, forest inventory, management plan, certificate of tax liabilities (Article 45 and ss Res JD-05-98); and ▪ more than 1,000 hectares: requested by indigenous chieftain (*Cacique General*) authorized by Congress.
		• **Individual Permits for Residential Use** indigenous (for each tree hewn, another ten must be planted and 70% of seedlings must take root) (Article 49, Res JD-05-98).
		Grant concessions: direct and public tenders (see below).
	• **Private property** (Article 26, Law 1/94) or legitimate **rights of possession** (Article 38, Res JD 05-98)	• **Authorized by contract with ANAM**: inventory, management plan, trees must be previously marked by ANAM inspectors (Article 26 L1/94) and land title or title of possession (Article 40, Res JD 05-98).
	• **Special permits**	• For the use of specific individual trees for **residential or subsistence purposes**. For each tree hewn, another ten must be planted and 70% of seedlings must take root. Application, financial income declaration (Articles 41 and 42 Res JD-05-98). • **Organized group** (up to 1,000 hectares) (Article 43 Res JD-05-98).
	• **Concessions to private natural or legal persons:**	• **Concessions to private natural or legal persons:** inventory, management plan, Environmental Impact Assessment, ANAM certificate of tax liabilities, technical and financial capacity, qualified professional, insurance, economic analysis (Articles 28 and 34 L1/94). ▪ Direct grant (less than 5,000 hectares requires public notices, Article 29 L 1/94). ▪ Public tender (areas greater than 5,000 hectares) (Article 54 on, Res JD-05-98).

Source: PNC, Recio, 2011.

REFERENCES

ANAM, 2003. "Informe final de resultados de la cobertura boscosa y uso del suelo de la República de Panamá: 1992 – 2000." Panamá, Panamá.

ANAM, 2008. "Plan Nacional de Desarrollo Forestal: Modelo Forestal Sostenible." Panamá.

ANAM, 2009. "Estrategia Nacional del Ambiente, Gestion Ambiental para el Desarrollo Sostenible 2008-2012." Panama.

ANAM, 2009a. "Informe del Estado del Ambiente." Panamá: ANAM, CATHALAC, PNUMA.

ANAM, 2009b. "Plan de Manejo del Parque Nacional Coiba." Smithsonian Tropical Resources Institute.

ANAM, 2010. "Inventario de los Humedales Continentales y Costeros de Panamá." Panamá. http://www.portalcuencas.net/Virtual_Library/Files/inventario_humedales_panama.pdf.

ANAM, 2010. "Atlas Ambiental." Panamá, Panamá.

ANAM, 2014. "Panamá presenta un nuevo mapa de cobertura boscosa y usos de la tierra." http://www.anam.gob.pa/index.php/site-map/311-panama-presenta-un-nuevo-mapa-de-cobertura-boscosa-y-usos-de-la-tierra.

Anaya, J., 2014. "Informe del Relator Especial sobre los derechos de los pueblos indígenas." *Consejo de Derechos Humanos,* A/HRC/27/52/Add.1. http://www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.27.52.Add.1-MissionPanama_AUV.pdf.

Argüelles, 2010. "Estrategia Institucional para la Prevención y Control de la Tala Ilegal en los Bosques del Darién en Panamá." ITTO. http://www.itto.int/files/user/pdf/PROJECT_REPORTS/ESTRATEGIA%20DE%20PREVENCI%C3%93N%20Y%20CONTROL%20TALA%20ILEGAL%20DARIEN%20PANAMA.%20doc.pdf.

Casas, A., 2008. "Marcos legales para el pago por servicios ambientales en América Latina y el Caribe: Análisis de Ocho países." *Organización de Estados Americanos (OEA).* http://www.oas.org/dsd/PES/MARCOSlegalsFnlLR2.pdf.

Centro del Agua para el Trópico Húmedo de América Latina y el Caribe (CATHALAC), 2008. "Diagnóstico del estado actual de los manglares, su manejo y su relación con la pesquería en Panamá. Diagnóstico biofísico, institucional-legal, socioeconómico y línea base del bosque manglar del distrito de Chiriquí, provincia de Chiriquí." Panamá.

Comisión Interamericana de Derechos Humanos (CIDH), 2009. "Derechos de los pueblos indígenas y tribales sobre sus tierras ancestrales y recursos naturales: normas y jurisprudencia del Sistema Interamericano de Derechos Humanos," Organización de estados Americanos (OEA).

CONADES, 2008. "Estrategia de Desarrollo Sostenible de Darien." Panama, Panama. http://www.conades.gob.pa/pdf/transparencia/idocumentos/ESTRATEGIADEDESARROLLOSOSTENIBLE-AnalisisIntegradoDarien.pdf

Consejo Internacional de las Maderas Tropicales, 2004. "Consecución del objetivo 2000 y la ordenación forestal sostenible en Panamá." Informe de la misión de diagnóstico. Japón.

Díaz-Espino, 2009. "Política y pobreza: Cómo integrar a los pobres a la economía de mercado." *Fundación Libertad.* Panamá, Panamá.

Díaz, I., E. Pineda y D. Arcia, 2012. "Incentivos y desincentivos a la actividad forestal en Panamá, Bosques y manejo forestal en América Central," CATIE, Panamá, Panamá. file:///Users/mariaeugeniarecio/Downloads/Incentivos%20Desincentivos%20Forestales%20Panam%C3%A1%20VF.pdf.

FAO, 2002, "El Marco Legal e Institucional de Panamá frente al Cambio Climático," *Serie Centroamericana de Bosques y Cambio Climático*. ftp://ftp.fao.org/docrep/fao/006/AD441S/AD441s02.pdf.

FAO, 2007. "The World´s Mangroves 1980-2005."

FAO, 2002. "Estado de la información forestal en Panamá." Vol. 13.

FCPF, 2009. "FCPF Report on progress with due diligence activities in Panama, participants committee meeting (FCPF PC4)." Washington, DC. October 27-28, 2009. https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Oct2009/11.g_Panama_WB_Update.pdf.

FCPF, 2012. "Readiness progress fact sheet," Panama, October 2012. https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Sep2012/Panama%20FCPF%20REDD%20Readiness%20Progress%20Sheet_Oct_2012_final.pdf.

Gutiérrez, A., 2010. "Estrategia Institucional para la Prevención y Control de la Tala Ilegal en los Bosques del Darién en Panamá." *WWF & ITTO*. Panamá, Panamá. http://www.itto.int/files/user/pdf/PROJECT_REPORTS/ESTRATEGIA%20DE%20PREVENCI%C3%93N%20Y%20CONTROL%20TALA%20ILEGAL%20DARIEN%20PANAMA.%20doc.pdf.

Gutman, V. et al, 2012. "Análisis del flujo de proyectos del MDL en América Latina y el Caribe," Proyecto REGATTA, Fundación Torcuato di Tella, documento de trabajo Nº1.11.2012. Octubre de 2012. www.cambioclimatico-regatta.org.

Heckadon-Moreno, S., 2009. "De Selvas a Potreros. La colonización Santeña en Panamá: 1850-1980." (Panamá: Exedra Books).

Huertas H., 2014. "Situación Jurídica de los territorios indígenas de Panamá." Panamá. Panamá.

Instituto Libertad y Democracia, 2006. "Evaluación preliminar de la economía extralegal en 12 países de Latinoamérica y el Caribe." Reporte de Investigación en Panamá. Panamá.

Isaza, A.C., 2002. "Conservación en Panamá Análisis del Marco Legal para la Conservación en Tierras Privadas en Panamá." Panamá: The Nature Conservancy, Agosto 2002.

Jiménez Pérez, J., 2014. "Documento Resumen Fase de Escucha Activa con Instituciones y Organizaciones, Diagnóstico Percibido sobre la Situación del Bosque en Panamá." ONU-REDD, Febrero 2014.

Kuper, J. 2014. "Guatemala Resource Tenure and Sustainable Landscapes Assessment." Washington, DC: USAID Tenure and Global Climate Change Program.

Mariscal, E., 2012. "Causas Directas e Indirectas de la Deforestación y Degradación de Bosques-Cambios de Uso de Suelo." Informe de Consultoría, Marzo 2012.

MGM Innova, 2012. "Panama Canal Authority Sustainable Forest Cover Establishment Project for CCBS," Marzo de 2012. http://www.climateprojects.info/chameleon/outbox/public/197/10358/PDD_ACP_CCBS.pdf.

ONU-REDD Panama, 2009. "Programa Nacional Conjunto (PNC)". http://www.un-redd.org/UNREDDProgramme/CountryActions/panama/tabid/1030/language/en-US/Default.aspx.

ONU-REDD Panama, 2012. "Expert Group Defines Options for Panama's REDD+ Implementation," http://www.un-redd.org/Newsletter23/Panama_Options_for_REDD_Implementation/tabid/55625/Default.aspx.

ONU-REDD Panama, 2013a. "Respuesta de Gerencia a la Evaluación de Medio Término," Panama. http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=11815&Itemid=53.

ONU-REDD Panama, 2013b. "Borrador de informe de evaluación de medio término," Programa Nacional Conjunto ONU-REDD Panamá, Equipo independiente de investigación y evaluación, Agosto de 2013. http://www.un-redd.org/UNREDDProgramme/CountryActions/panama/tabid/1030/language/en-US/Default.aspx.

ONU-REDD Panama, 2013c. "Preliminary note on findings, conclusions and recommendations," *Independent team for the investigation and evaluation of the UN-REDD Panama Programme*, 22 June 22 2013. http://www.un-redd.org/UNREDDProgramme/CountryActions/panama/tabid/1030/language/en-US/Default.aspx

ONU-REDD Panama, 2013d. "Proceso de Consulta y Participación para la Elaboración de la Estrategia Nacional REDD+ Panamá. Propuesta de Abordaje," versión de 2 de Septiembre de 2013. http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=12366&Itemid=53

ONU-REDD Panama, 2013e. "Informe Semestral del Programa REDD+ Nacional," Septiembre 2013, http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=11767&Itemid=53.

ONU-REDD, 2012. "Directrices sobre la participación de las partes interesadas en la preparación para REDD+ con énfasis en la participación de los pueblos indígenas y otras comunidades cuyo sustento depende de los bosques," 20 de abril de 2012.

ONU-REDD, 2013. Directrices sobre el Consentimiento Libre, Previo e Informado," de enero de 2013

Panama, 2009. "Plan de Preparación para REDD (R-PP)."

Panama Canal Authority Sustainable Forest Cover Establishment Project for CCBS, MGM Innova, Marzo de 2012. Disponible en: http://www.climateprojects.info/chameleon/outbox/public/197/10358/PDD_ACP_CCBS.pdf, accedido el 10 de Mayo de 2014.

Panama, 2009. "Readiness Plan (R-Plan) Template," Panama, May 16, 2009.

Panama, 2012. "Draft REDD Readiness Progress Fact Sheet," June 2012. https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/June2012/Panama%20FCPF%20REDD%20Readiness%20Progress%20Sheet_June_2012_draft_clean.pdf.

Peña Chacón, M., 2013. "El principio de No Regresión Ambiental en el Derecho Comparado Latinoamericano," PNUD, San José.

Perafán Heli Nessim, 2001. "Consulta comunitaria: El caso de Darién, Panamá, Serie de informes de buenas prácticas del Departamento de Desarrollo Sostenible." *Banco Interamericano de Desarrollo*. Washington, D.C. http://util.socioambiental.org/inst/esp/consulta_previa/sites/util.socioambiental.org.inst.esp.consulta_previa/files/Caso_Darien.pdf.

PRISMA, 2013. "Indigenous Peoples and Governance in REDD+Readiness in Panama, Case Study on COONAPIP, ANAM and the UN-REDD PROGRAM.

PRODAR, 2011. "Análisis de la situación socioeconómica de los Colonos desplazados a la Comunidad – Colonia Chiricana - corregimiento de Sambú," 5 de Septiembre de 2011. http://www.presidencia.gob.pa/prodar/admin/gal/92/files//Analisis-Sambu.pdf.

PRONAT, 2008. "Evaluación social financiamiento adicional PRONAT AF" Banco Mundial-Ministerio de Economía y Finanzas. Panamá.

Ramsar, 2010. "Inventario de los Humedales Continentales y Costeros de Panamá." Panamá.

Recio, E., 2011. "REDD+: Aspectos legales relativos a su aplicación en Panamá." Consultoría para ONU-REDD Panama. http://www.pnuma.org/gobernanza/unredd.php.

REDD CCAD GIZ, 2013. "Acuerdo de Cooperación Técnica entre la ACP, la ANAM y el Programa REDD CCAD-GIZ," 20 Junio de 2013. http://www.reddccadgiz.org/2013noticia.php?id=129.

REDD CCAD GIZ, 2013. "Cuenca del Canal de Panamá emitirá primeros bonos de carbono," 19 de Septiembre de 2013. http://www.reddccadgiz.org/noticia.php?id=224.

Takacs, D., 2009. "Forest Carbon Law and Property Rights." *Conservation International*. Noviembre, 2009.

Vergara-Asenjo, P., 2013. "The good dweller's dilemma: A land tenure and forest cover analysis in Panama and its implications for REDD+ implementation," Manuscript submitted to Elsevier, March 2013.

LAWS REVIEWED IN PREPARING THIS REPORT

«Código Civil de la República de Panamá, Ley nº 2 de 22 de agosto de 1916 (GO Nº2404 de 22 de agosto de 1916).»

«Código Fiscal, Ley 8 de 27 de enero de 1956, "por la cual se aprueba el Código Fiscal de la República" (GO Nº12995, de 29 de junio de 1956).»

«Constitución Política de la República de Panamá, conforme al Decreto Ejecutivo Nº672, "por el cual el Órgano Ejecutivo ordena la publicación del Texto Único de la Constitución Política de la República de Panamá de 1972, reformada por los Actos Reformatorios de 1978, el Acto Constitutional de 1983, los Actos Legislativos Nº1 de 1993 y Nº2 de 1994, y el Acto Legislativo Nº 1 de 27 de julio de 2004" (GO Nº25176, de lunes 15 de noviembre de 2004).»

«Creado por Decreto Ejecutivo Nº1 de 2009, "por el cual se crea el Comité Nacional de Cambio Climático en Panamá"(GO Nº 26212, de 29 de enero de 2009).»

«Decreto Ejecutivo 1, "por la cual se modifica el artículo 2 del Decreto Nº5-A de 23 de abril de 1982"(GO Nº 26238, de 11 de marzo de 2009).»

«Decreto Ejecutivo 127, de 10 de diciembre de 2010, por la cual se modifica el art. 2 del Decreto Nº25 de 28 de septiembre de 1983, que declara y describe el Bosque Protector de Palo Seco en los Distritos de Chiriquí Grande y Changuinola, Provincia de Bocas del Toro" y se dictan otras disposiciones (GO Nº26679, de 14 de diciembre de 2010) .»

«Decreto Ejecutivo 283-2006, "por el cual se reglamenta el artículo 22 del Capítulo I, Título IV de la Ley 41 de 1 de Julio de 1998" (GO Nº 25690, de 13 de diciembre de 2006).»

«Decreto Ejecutivo 287 de 2008, "que crea la Comisión de Alto Nivel para atender los problemas de los pueblos indígenas de Panamá." (GO Nº26092, de 28 de julio de 2008).»

«Decreto Ejecutivo 33, "Por el cual se aprueba la Política Nacional de Supervisión, Control y Fiscalización Ambiental sus principios, objetivos y líneas de Acción" (GO Nº25764). »

«Decreto Ejecutivo 37 de 2009, "Por el cual se aprueba la Política Nacional Forestal, sus principios, objetivos y líneas de acción." (GO Nº 26302, de 12 de junio de 2009) .»

«Decreto Ejecutivo 480 de 23 de abril de 2013, que aprueba la Política Nacional de Recursos Hídricos, sus principios, objetivos y líneas de Acción (GOPA 27273A , de 24 de abril de 2013) »

«Decreto Ejecutivo 52 de 2013 (GO Nº 27217-A). »

«Decreto Ejecutivo 82, "Por el cual se aprueba la Política Nacional de Descentralización de la Gestión Ambiental, sus principios, objetivos y líneas de Acción" (GO Nº 25777, de 24 de abril de 2007) »

«Decreto Ejecutivo Nº 35, "por el cual se aprueba la Política Nacional de Cambio Climático, sus principios, objetivos y líneas de Acción" (GO Nº 25764, de 4 de abril de 2007).»

«Decreto Ejecutivo No. 84 de 9 de abril de 1999 , por la cual se adopta la carta órganica administrativa de la Comarca Emberá-Wounaan de Darién (Gaceta Oficial No. 23,776 de 84 de 16 de abril de 1999).»

«Ley 1 de 1994, "por la cual se establece la Legislación Forestal de la República de Panamá, y se dictan otras disposiciones" (GO 22470, de 7 de febrero de 1994).»

«Ley 12 de 1973, "por la cual se crea el Ministerio de Desarrollo Agropecuario y se señalan sus funciones y facultades" GO Nº17271, de 26 de Enero de 1973).»

«Ley 21 de 1997, "Por la cual se aprueba el Plan Regional para el Desarrollo de la Región Intero- ceánica y el Plan General de Uso, Conservación y Desarrollo del Área del Canal," GO Nº 23323, de 3 de julio de 1997.»

«Ley 23 de 1983 (GO Nº 19926, de 27 de octubre de 1983), modificado por la ley Nº46, de 14 de agosto de 2001 "Que reforma, adiciona y deroga artículos de la Ley 23 de 1983, que reglamenta las Organizaciones Campesinas."(GO Nº 24368, de 17 de agosto de 2001). .»

«Ley 24 de 1995, "por la cual se establece la legislación de vida silvestre en la Republica de Panamá y se dictan otras disposiciones." (GO Nº 22801, de 9 de junio de 1995).»

«Ley 37 de 1962, "Por la cual se aprueba el Código Agrario de la República." GO Nº14923, de 22 de julio de 1963.»

«Ley 41 de 1998, "Ley General del Ambiente de la República de Panamá", (GO Nº 23578, de 03 julio de 1998).»

«Ley 44 de 2006, "que crea la Autoridad de los Recursos Acuáticos de Panamá, unifica las distintas competencias sobre los recursos marino-costeros, la acuicultura, la pesca y las actividades conexas de la administración pública y dicta otras disposiciones." (GO Nº25680, de 27 de noviembre de 2006).»

«Ley 44, de 5 de agosto de 2002, que establece el Régimen Administrativo Especial para el manejo, protección y conservación de las cuencas hidrográficas de la República de Panamá y su Decreto Ejecutivo 479 de 23 de abril de 2013»

«Ley 55 de 2011, "que adopta el Código Agrario de la República de Panamá" (GO 26795, 30 de mayo de 2011).»

«Ley 59 de 2010, "que crea la Autoridad Nacional de Administración de Tierras, unifica las competencias de la Dirección General de Catastro, la Dirección Nacional de Reforma Agraria, el Programa Nacional De Administración de Tierras y el Instituto Geográfico Nacional Tommy Guardia y dicta otras disposiciones" (GO Nº 26638, de 8 de octubre de 2010.).»

«Ley 72 de 2008, "que establece el procedimiento especial para la adjudicación de la propiedad colectiva de tierras de los pueblos indígenas que no están dentro de las comarcas" (GO Nº26193 de 30 de diciembre de 2008) reglamentado por Decreto Ejecutivo Nº223 de 29 de junio de 2010 (GO 26571, de 07 de julio de 2010). .»

«Ley 80 de 31 de diciembre de 2009, que reconoce derechos posesorios y regula la titulación en las zonas costeras y el territorio insular con el fin de garantizar su aprovechamiento óptimo y dicta otras disposicioines (GO 26438, de 31 de diciembre de 2009) .»

«Ley 80 de 31 de diciembre de 2009, que reconoce derechos posesorios y regula la titulación en las zonas costeras y el territorio insular con el fin de garantizar su aprovechamiento óptimo y dicta otras disposicioines (GO 26438, de 31 de diciembre de 2009) .»

«Ley No. 10 de 1995, que aprueba, "por la cual se aprueba la Convencion Marco De Las Naciones Unidas Sobre El Cambio Climático, hecha en Nueva York el 9 de mayo de 1992." (GO Nº 22763, de 17 de abril de 1995).»

«Ley No. 2 de 1995, "por la cual se aprueba el Convenio sobre la Diversidad Biológica hecho en Rio de Janeiro el 5 junio de 1992." (GO Nº 22704, de enero de 1995).»

«Ley No. 24 de 1992, por la cual se establecen incentivos y reglamenta la actividad de reforestación en la República de Panamá (GO Nº 2172, de 27 de noviembre de 1992).»

«Ley No. 88 de 1998, "por el cual se aprueba el Protocolo de Kyoto de la Convención Marco de las Naciones Unidas sobre el Cambio Climático, hecho en Kyoto, el 11 de diciembre de 1997." (GO Nº 23703, de 31 de diciembre de 1998).»

«Ley Nº29 de 25 de octubre de 1984, por la cual se adopta el Código Judicial (GO 6 de diciembre de 1984) y modificatorias.»

«Ley Nº3 de 1999, "por la cual se crea la Entidad Autónoma denominada Registro Público de Panamá", (GO 23709, de 11 de enero de 1999).»

«Plan Nacional de Gestión Integrada de Recursos Hídricos de la República de Panamá 2010-2030, ANAM.» http://www.anam.gob.pa/images/stories/plan_nacional/index.html.

«Resolución AG 0092-2005, por el cual se adoptan criterios y parámetros ambientales que deben cumplirse durante el proceso de adjudicación, a titulo oneroso, de las parcelas estatales cuya competencia corresponde a las Administraciones regionales de la Autoridad Nacional del Ambiente en la Provincia de Darién, Panamá Este y se dictan otras disposiciones" (GONº25241, 21 de febrero de 2005).»

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«Resolución AG 0265-2005, por la cual se faculta al Administrador Regional de la ANAM de la provincia de Darién, para que otorguen o nieguen concepto favorable, respecto al trámite de titulación de tierras, dentro del Programa de titulación masivo de tierras que adelanta el Programa de Desarrollo Sostenible de Darién (GO 25306, de 25 de Mayo de 2005).»

«Resolución AG 0341-2002, por la cual se faculta al Jefe del Servicio Nacional de Desarrollo y Administración Forestal y a los Administradores Regionales de la ANAM, para que otorguen o nieguen el concepto favorable a la adjudicación de tierras pertenecientes al Patrimonio Forestal del Estado" (GO 24609, de 2 de agosto de 2002). »

«Resolución AG 0596-2008, "por medio de la cual se modifica la Resolución AG-036-2005 de 12 de julio de 2005" (GOPA Nº 26092, de 28 de julio de 2008).»

«Resolución AG- 1103-2009, "por la cual se Crea y Regula el Manejo Compartido en el Sistema Nacional de Áreas Protegidas (SINAP), y se dictan otras disposiciones" (GO Nº 26452-A, 21 de enero de 2010).»

«Resolución AG-0040-2001 (GO Nº 24252, de 2 de marzo de 2001).»

«Resolución AG-0040-2001, que crea el Programa Nacional de Cambio Climático (GO Nº 24252, de 2 de marzo de 2001). »

«Resolución AG-0139-2009, por medio de la cual se declara el área protegida de Donoso (GO 26235, de 6 de marzo de 2009). .»

«Resolución AG-0155-2011, "por la cual se reglamenta el proceso de aprobación nacional de proyectos de reducción de emisiones de gases de efecto invernadero que optan al mecanismos de desarrollo limpio, definidos por el Protocolo de Kyoto." (GO Nº 26773, de 27 de abril de 2011).»

«Resolución AG-0170-2006 " que aprueba el Procedimiento para la Gestión, Elaboración, Aplicación y Aprobaciónd e los Planes de Manejo para las Áreas Protegidas" (GO Nº25531, 25 de abril d 2006). .»

«Resolución AG-0365-2005, de 12 de julio de 2005, "que establece el procedimiento para la concesión de servicios en áreas protegidas y se dictan otras disposiciones." (GO Nº25354, de 1 de agosto de 2005).»

«Resolución AG-0375-2004, que establece los procedimientos para tramitar los Ofrecimientos de Primera Opción de Compra de Terrenos a la ANAM, cuando se localicen en el SINAP (GO Nº 25720, de 29 de enero de 2007).»

«Resolución AG-0375-2004, que establece los procedimientos para tramitar los Ofrecimientos de Primera Opción de Compra de Terrenos a la ANAM, cuando se localicen en el SINAP (GO Nº 25720, de 29 de enero de 2007). »

«Resolución AG-0491-2006 que reglamenta los artículos 94 y 95 de la Ley 41 de 1998 General de Ambiente: aprovechamiento, manejo y conservación de los recursos costeros y marinos en las áreas protegidas de Panamá. Art. 2 (G.O. 25647) »

«Resolución ANAM AG-0619-2012 de 8 de noviembre de 2012 (G.O.27167-A), por la cual se reglamenta el proceso para la creación de áreas protegidas; la modificación de áreas protegidas declaradas; y se dictan otras disposiciones. Modificada porla Resolución AG- 0916 del 20 de diciembre de 2013 (G.O. 27440), por la cual se reglamenta el proceso para el manejo de áreas protegidas y se dictan otras disposiciones. »

«Resolución JD 05-98, "por la cual se reglamenta la Legislación Forestal de la República de Panamá." (GO Nº 23495, de 6 de marzo de 1998).»

«Resolución JD N° 09-94, "por medio de la cual se crea el sistema nacional de áreas silvestres, protegidas, ente administrativo del instituto nacional de recursos naturales renovables, y se definen cada una de sus categorías de manejo."(GO Nº22586, de 25 de julio de 1994).»

«Resolución Nº AG-0613-2009,"por la cual se aprueba y adopta en todas sus partes la Guía Metodológica para Desarrollar Planes Generales de Manejo Forestal (PGMF) y Planes Operativos Anuales (POA) en Bosques Tropicales, para el trámite de solicitudes de aprovechamientos forestales sostenibles". (GO 26379, de 01 de octubre de 2009.) .»

«Resolución Nº AG-0613-2009,"por la cual se aprueba y adopta en todas sus partes la Guía Metodológica para Desarrollar Planes Generales de Manejo Forestal (PGMF) y Planes Operativos Anuales (POA) en Bosques Tropicales, para el trámite de solicitudes de aprovechamientos forestales sostenibles". (GO 26379, de 01 de octubre de 2009.).»

«Resuelto ARAP Nº 01,"por medio del cual se establecen todas las áreas de humedales marino-costeros, particularmente los manglares de la república de panamá como zonas especiales de manejo marino-costero y se dictan otras medidas."(GO Nº 25988, 28 de febrero de 2008).»

Anteproyecto de ley "Por la cual se establece la nueva Legislación Forestal y se dictan otras disposiciones. http://www.asamblea.gob.pa/apps/seg_legis/PDF_SEG/PDF_SEG_2010/PDF_SEG_2011/PROYECTO/2011_P_397.pdf.

Comarca de Kuna Yala. «Ley No. 2 del 16 de septiembre de 1938; Ley No. 16 de 19 de febrero de 1953 (GO Nº12042 de 7 de abril de 1953); Ley No. 99 de 23 de diciembre de 1998.»

Comarca Emberá. «Ley No. 22 de 8 de noviembre de 1983, por la cual se crea la comarca Emberá de Darién (GO Nº. 19976, de 17 de enero de 1984).»

Comarca Kuna de Madungandí. «Ley No. 24 de 12 de enero de 1996, por la cual se crea la comarca Kuna de Madugandí (GOPA Nº22951, de 15 de Enero de 1996); su Carta Orgánica fue sancionada a través del Decreto Ejecutivo No. 228 de 3 de diciembre de 1998 (GO Nº 23687, de 8 de Diciembre de 1998).»

Comarca Kuna de Wargandí. «Ley de creación Nº 34 de 25 de julio de 2000 (GO Nº 24106, de 28 de Julio de 2000); su Carta Orgánica fue sancionada mediante el Decreto Ejecutivo No. 414 de 22 de Octubre de 2008 (GO Nº 26165, de 14 de Noviembre de 2008).»

Corte Suprema de Justicia. Fallo No 7 de 24 de septiembre de 1993. Publicada en la Gaceta Oficial No 22,517 del 18 de abril de 1994.

Fallo de 23 de diciembre de 2013 de la Sala de lo Contencioso Administrativo de la Corte Suprema de Justicia de Panamá. Demanda Contencioso Administrativa de Nulidad interpuesta por el licenciado Aristides Figueroa, en representación de Constantino González Rodríguez, para que se declare nula, por ilegal, la Resolución No. AG-0072-2009 de 3 de febrero de 2009, emitida por la Autoridad Nacional del Ambiente (ANAM), y publicada en Gaceta Oficial No. 26, 221 de 11 de febrero de 2009. »

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